

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

POST-EFFECTIVE AMENDMENT NO. 2 TO

**Form S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**BANK OF AMERICA CORPORATION**

*(Exact Name of Registrant as  
Specified in its Charter)*

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

**56-0906609**  
*(I.R.S. Employer  
Identification Number)*

**(See Table of Additional Registrants)**

**Bank of America Corporate Center  
100 North Tryon Street  
Charlotte, North Carolina 28255  
(704) 386-5681**

*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)*

**ROSS E. JEFFRIES, JR.  
Deputy General Counsel and Corporate Secretary  
Bank of America Corporation  
Bank of America Corporate Center  
100 North Tryon Street  
Charlotte, North Carolina 28255  
(704) 386-5681**

*(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)*

**RICHARD W. VIOLA  
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McGuireWoods LLP  
201 North Tryon Street  
Charlotte, North Carolina 28202**

**Copies to:**

**JAMES R. TANENBAUM  
ANNA T. PINEDO  
Morrison & Foerster LLP  
250 West 55th Street  
New York, New York 10019**

**Approximate date of commencement of the proposed sale to the public:** From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Smaller reporting company

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**CALCULATION OF REGISTRATION FEE**

| Title of each class of securities to be registered   | Amount to be registered/<br>Proposed<br>maximum offering price per unit/<br>Proposed maximum aggregate<br>offering price(1) | Amount of<br>registration<br>fee(3) |
|--|---|-------------------------------------|
| Debt Securities  | (1)(2)(8)   | (3)                                 |
| Warrants   | (1)(2)(8)   | (3)                                 |
| Purchase Contracts   | (1)(2)(8)   | (3)                                 |
| Units(4)   | (1)(2)(8)   | (3)                                 |
| Preferred Stock  | (1)(2)(8)   | (3)                                 |
| Depository Shares(5)   | (1)(2)(8)   | (3)                                 |
| Common Stock, par value \$0.01 per share   | (1)(2)(8)   | (3)                                 |
| Junior Subordinated Notes  | (2)(8)  | (3)                                 |
| Trust Securities of BAC Capital Trusts VI, VII, VIII, XI, XIII, XIV and XV; NB Capital Trust III; Merrill Lynch Capital Trusts I, II and III; and Merrill Lynch Preferred Capital Trusts III, IV and V (collectively, the "Trusts")(6) | (2)(8)  | (3)                                 |
| Partnership Preferred Securities of Merrill Lynch Preferred Funding III, L.P., Merrill Lynch Preferred Funding IV, L.P. and Merrill Lynch Preferred Funding V, L.P. (collectively, the "Partnerships")                                 | (2)(8)  | (3)                                 |
| Bank of America Corporation Guarantees with respect to Trust Securities and Partnership Preferred Securities(7)  | (2)(8)  | (3)                                 |
| <b>Total</b>   | <b>\$125,000,000,000(1)(2)(8)</b>   | <b>\$14,525,000(3)(8)</b>           |

- (1) The amount to be registered and the proposed maximum aggregate offering price per unit are not specified as to each class of securities being registered pursuant to General Instruction II.D of Form S-3 under the Securities Act of 1933, as amended, or the Securities Act. The maximum aggregate offering price of all securities issued by the Registrants pursuant to this Registration Statement shall not have a maximum aggregate offering price that exceeds \$125 billion in U.S. dollars or the equivalent thereof in any other currency.
- (2) This Registration Statement also covers an indeterminate amount of the registered securities that may be reoffered and resold on an ongoing basis after their initial sale in market-making transactions by affiliates of the Registrants. These securities consist of an indeterminate amount of such securities that are initially being registered, and will initially be offered and sold, under this Registration Statement and an indeterminate amount of such securities that were initially registered, and were initially offered and sold, under registration statements previously filed by the Registrants or certain predecessors. All such market-making transactions with respect to these securities that are made pursuant to a registration statement after the effectiveness of this Registration Statement are being made solely pursuant to this Registration Statement.
- (3) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457(o) under the Securities Act.
- (4) Each unit will represent an interest in one or more of Bank of America Corporation's debt securities, warrants, purchase contracts, shares of preferred stock, depository shares, or common stock being registered under this Registration Statement, or debt or equity securities of third parties, in any combination, which may or may not be separable from one another.
- (5) Each depository share will represent a fractional interest in a share or multiple shares of preferred stock and will be evidenced by a depository receipt.
- (6) This Registration Statement covers the securities that were previously issued by any of the Trusts, including but not limited to capital securities, trust preferred securities, preferred income trust securities, treasury income trust securities, corporate income trust securities and trust originated preferred securities.
- (7) Bank of America Corporation also is registering the guarantees and other obligations that it may have with respect to trust securities or partnership preferred securities previously issued by any of the Trusts or the Partnerships. No separate consideration will be received for any of the guarantees or other obligations. Pursuant to Rule 457(n) under the Securities Act, no separate registration fee will be paid in respect of any such guarantees or any other obligations.
- (8) Pursuant to Rule 457(q) under the Securities Act, no filing fee is required for the registration of an indeterminate amount of securities to be offered in market-making transactions by affiliates of the Registrants as described in Note (2) above.

**Table of Additional Registrants**

|   |          |            |                        |
|---|----------|------------|------------------------|
| BAC Capital Trust VI                      | Delaware | 03-6104157 | Bank of America        |
| BAC Capital Trust VII                     | Delaware | 73-6345874 | Corporate Center       |
| BAC Capital Trust VIII                    | Delaware | 20-6633721 | 100 North Tryon Street |
| BAC Capital Trust XI                      | Delaware | 20-7336759 | Charlotte, NC 28255    |
| BAC Capital Trust XIII                    | Delaware | 20-7020707 | (704) 386-5681         |
| BAC Capital Trust XIV                     | Delaware | 20-7020714 |                        |
| BAC Capital Trust XV                      | Delaware | 26-6201018 |                        |
| NB Capital Trust III                      | Delaware | 56-6490302 |                        |
| Merrill Lynch Capital Trust I             | Delaware | 20-5981594 |                        |
| Merrill Lynch Capital Trust II            | Delaware | 20-8880175 |                        |
| Merrill Lynch Capital Trust III           | Delaware | 26-0688620 |                        |
| Merrill Lynch Preferred Funding III, L.P. | Delaware | 13-3982448 |                        |
| Merrill Lynch Preferred Capital Trust III | Delaware | 13-7139561 |                        |
| Merrill Lynch Preferred Funding IV, L.P.  | Delaware | 13-3982446 |                        |
| Merrill Lynch Preferred Capital Trust IV  | Delaware | 13-7139562 |                        |
| Merrill Lynch Preferred Funding V, L.P.   | Delaware | 13-3983474 |                        |
| Merrill Lynch Preferred Capital Trust V   | Delaware | 13-7140866 |                        |

*(Exact Name of Registrant as Specified in its Charter)*

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

*(I.R.S. Employer Identification Number)*

*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)*

**EXPLANATORY NOTE**

This Post-Effective Amendment No. 2 to the Registration Statement on Form S-3 (File No. 333-180488) is being filed to include information that is required to be included in the registration statement by such form for registrants who are no longer well-known seasoned issuers, as defined in Rule 405 under the Securities Act of 1933, as amended.

This Registration Statement contains:

- a base prospectus to be used by Bank of America Corporation in connection with offerings of its debt securities, warrants, units, purchase contracts, preferred stock, depository shares, and common stock;
- a form of prospectus supplement to the base prospectus relating to the offering by Bank of America Corporation of its Medium-Term Senior Notes, Series L, and Medium-Term Subordinated Notes, Series L;
- a base prospectus to be used by Bank of America Corporation in connection with offerings of its senior and subordinated InterNotes®; and
- a market-maker prospectus intended for use by Bank of America Corporation's direct or indirect wholly-owned subsidiaries, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, or other affiliates in connection with offers and sales related to secondary market transactions (market-making transactions) in debt securities, preferred stock, depository shares, junior subordinated notes, trust securities, partnership preferred securities, or guarantees previously registered under the Securities Act of 1933, as amended. The market-maker prospectus does not substitute or replace the original prospectuses relating to securities offered hereby in such market-making transactions, which are on file with the Securities and Exchange Commission.

Each of the two base prospectuses, as well as the prospectus supplement described above, also may be used by affiliates of Bank of America Corporation, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, in market-making transactions in the securities described above after they are initially offered and sold.

PROSPECTUS



**\$118,000,000,000**

**Debt Securities, Warrants, Units, Purchase Contracts,  
Preferred Stock, Depositary Shares, and Common Stock**

We from time to time may offer to sell up to \$118,000,000,000, or the equivalent thereof in any other currency, of debt securities, warrants, purchase contracts, preferred stock, depositary shares representing fractional interests in preferred stock, and common stock, as well as units comprised of one or more of these securities or debt or equity securities of third parties, in any combination. The debt securities, warrants, purchase contracts, and preferred stock may be convertible into or exercisable or exchangeable for our common or preferred stock or for debt or equity securities of one or more other entities. Our common stock is listed on the New York Stock Exchange under the symbol "BAC."

This prospectus describes all material terms of these securities that are known as of the date of this prospectus and the general manner in which we will offer the securities. When we sell a particular issue of securities, we will prepare one or more supplements to this prospectus describing the offering and the specific terms of that issue of securities. You should read this prospectus and any applicable supplement carefully before you invest.

We may use this prospectus in the initial sale of these securities. In addition, Merrill Lynch, Pierce, Fenner & Smith Incorporated, or any of our other affiliates, may use this prospectus in a market-making transaction in any of these securities after their initial sale. Unless you are informed otherwise in the confirmation of sale, this prospectus is being used in a market-making transaction.

**Potential purchasers of our securities should consider the information set forth in the ["Risk Factors"](#) section beginning on page 9.**

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*Our securities are unsecured and are not savings accounts, deposits, or other obligations of a bank, are not guaranteed by Bank of America, N.A. or any other bank, are not insured by the Federal Deposit Insurance Corporation or any other governmental agency, and may involve investment risks, including possible loss of principal.*

*Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.*

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**Prospectus dated February 24, 2015**

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the “SEC,” utilizing a “shelf” registration process. Under this shelf process, we may, from time to time, sell any combination of the securities described in this prospectus or the registration statement in one or more offerings.

This prospectus provides you with all material terms of securities we may offer that are known as of the date of this prospectus and the general manner in which we will offer the securities. Each time we sell securities, we will provide one or more prospectus supplements, product supplements, pricing supplements (each of which we may refer to as a “term sheet”), and/or index supplements that describe the particular securities offering and the specific terms of the securities being offered. These documents also may add, update, or change information contained in this prospectus. In this prospectus, when we refer to the “applicable supplement” or the “accompanying supplement,” we mean the prospectus supplement or supplements, as well as any applicable pricing, product, or index supplements, that describe the particular securities being offered to you. If there is any inconsistency between the information in this prospectus and the applicable supplement, you should rely on the information in the applicable supplement.

The information in this prospectus is not complete and may be changed. You should rely only on the information provided in or incorporated by reference in this prospectus, the accompanying supplement, or documents to which we otherwise refer you. We are not making an offer of these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus and the accompanying supplement, as well as information we have filed or will file with the SEC and incorporated by reference in this prospectus, is accurate as of the date of the applicable document or other date referred to in that document. Our business, financial condition, and results of operations may have changed since that date.

Unless we indicate otherwise or unless the context requires otherwise, all references in this prospectus to “Bank of America,” “we,” “us,” “our,” or similar references are to Bank of America Corporation excluding its consolidated subsidiaries.

References in this prospectus to “\$” and “dollars” are to the currency of the United States of America; and references in this prospectus to “€” and “euro” are to the currency introduced at the start of the third stage of the European Economic and Monetary Union pursuant to Article 109g of the Treaty establishing the European Community, as amended from time to time.

## PROSPECTUS SUMMARY

This summary section provides a brief overview of all material terms of the securities we may offer that are known as of the date of this prospectus and highlights other selected information from this prospectus. This summary does not contain all the information that you should consider before investing in the securities we may offer using this prospectus. To fully understand the securities we may offer, you should read carefully:

- this prospectus, which explains the general terms of the securities we may offer;
- the applicable supplement, which explains the specific terms of the particular securities we are offering, and which may update or change the information in this prospectus; and
- the documents we refer to in “Where You Can Find More Information” below for information about us, including our financial statements.

### Bank of America Corporation

Bank of America Corporation is a Delaware corporation, a bank holding company, and a financial holding company. Through our banking and various nonbank subsidiaries throughout the U.S. and in international markets, we provide a diversified range of banking and nonbank financial services and products. Our principal executive offices are located in the Bank of America Corporate Center, 100 North Tryon Street, Charlotte, North Carolina 28255 and our telephone number is (704) 386-5681.

### The Securities We May Offer

We may use this prospectus to offer up to \$118,000,000,000, or the equivalent thereof in any other currency, of any of the following securities from time to time:

- debt securities;
- warrants;
- purchase contracts;
- preferred stock;
- depositary shares representing fractional interests in preferred stock;
- common stock; and
- units, comprised of one or more of any of the securities referred to above or debt or equity securities of third parties, in any combination.

When we use the term “securities” in this prospectus, we mean any of the securities we may offer with this prospectus, unless we specifically state otherwise. This prospectus, including this summary, describes the general terms of the securities we may offer. Each time we sell securities, we will provide you with the applicable supplement or supplements that will describe the offering and the specific terms of the securities being offered. A supplement may include a discussion of additional U.S. federal income tax consequences and any additional risk factors or other special considerations applicable to those particular securities.

### Debt Securities

Our debt securities may be either senior or subordinated obligations in right of payment. Our senior and subordinated debt securities will be issued under separate indentures, or contracts, that



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we have with The Bank of New York Mellon Trust Company, N.A., as successor trustee. The particular terms of each series of debt securities will be described in the applicable supplement.

### **Warrants**

We may offer warrants, including:

- warrants to purchase our debt securities; and
- warrants to purchase or sell, or whose cash value is determined by reference to the performance, level, or value of, one or more of the following:
  - securities of one or more issuers, including our common or preferred stock, other securities described in this prospectus, or the debt or equity securities of third parties;
  - one or more currencies, currency units, or composite currencies;
  - one or more commodities;
  - any other financial, economic, or other measure or instrument, including the occurrence or non-occurrence of any event or circumstance; and
  - one or more indices or baskets of the items described above.

For any warrants we may offer, we will describe in the applicable supplement the underlying property, the expiration date, the exercise price or the manner of determining the exercise price, the amount and kind, or the manner of determining the amount and kind, of property to be delivered by you or us upon exercise, and any other specific terms of the warrants. We will issue warrants under warrant agreements that we will enter into with one or more warrant agents.

### **Purchase Contracts**

We may offer purchase contracts requiring holders to purchase or sell, or whose cash value is determined by reference to the performance, level, or value of, one or more of the following:

- securities of one or more issuers, including our common or preferred stock, other securities described in this prospectus, or the debt or equity securities of third parties;
- one or more currencies, currency units, or composite currencies;
- one or more commodities;
- any other financial, economic, or other measure or instrument, including the occurrence or non-occurrence of any event or circumstance; and
- one or more indices or baskets of the items described above.

For any purchase contracts we may offer, we will describe in the applicable supplement the underlying property, the settlement date, the purchase price, or manner of determining the purchase price, and whether it must be paid when the purchase contract is issued or at a later date, the amount and kind, or manner of determining the amount and kind, of property to be delivered at settlement, whether the holder will pledge property to secure the performance of any obligations the holder may have under the purchase contract, and any other specific terms of the purchase contracts.

**Units**

We may offer units consisting of one or more securities described in this prospectus or debt or equity securities of third parties, in any combination. For any units we may offer, we will describe in the applicable supplement the particular securities that comprise each unit, whether or not the particular securities will be separable and, if they will be separable, the terms on which they will be separable, a description of the provisions for the payment, settlement, transfer, or exchange of the units, and any other specific terms of the units. We will issue units under unit agreements that we will enter into with one or more unit agents.

**Preferred Stock and Depositary Shares**

We may offer our preferred stock in one or more series. For any particular series we may offer, we will describe in the applicable supplement:

- the specific designation;
- the aggregate number of shares offered;
- the dividend rate and periods, or manner of calculating the dividend rate and periods, if any;
- the stated value and liquidation preference amount, if any;
- the voting rights, if any;
- the terms on which the series of preferred stock is convertible into shares of our common stock, preferred stock of another series, or other securities, if any;
- the redemption terms, if any; and
- any other specific terms of the series.

We also may offer depositary shares, each of which will represent a fractional interest in a share or multiple shares of our preferred stock. We will describe in the applicable supplement any specific terms of the depositary shares. We will issue the depositary shares under deposit agreements that we will enter into with one or more depositories.

**Form of Securities**

Unless we specify otherwise in the applicable supplement, we will issue the securities in book-entry only form through one or more depositories, such as The Depository Trust Company, Euroclear Bank SA/NV, or Clearstream Banking, société anonyme, Luxembourg, as identified in the applicable supplement. We will issue the securities only in registered form, without coupons, although we may issue the securities in bearer form if we so specify in the applicable supplement. The securities issued in book-entry only form will be uncertificated or will be represented by a global security registered in the name of the specified depository, rather than certificated securities in definitive form registered in the name of each individual investor. Unless we specify otherwise in the applicable supplement, each sale of securities in book-entry form will settle in immediately available funds through the specified depository.

A global security may be exchanged for certificated securities in definitive form registered in the names of the beneficial owners only under the limited circumstances described in this prospectus.

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### **Payment Currencies**

All amounts payable in respect of the securities, including the purchase price, will be payable in U.S. dollars, unless we specify otherwise in the applicable supplement.

### **Listing**

We will state in the applicable supplement whether the particular securities that we are offering will be listed or quoted on a securities exchange or quotation system.

### **Distribution**

We may offer the securities under this prospectus:

- through underwriters;
- through dealers;
- through agents; or
- directly to purchasers.

The applicable supplement will include any required information about the firms we use and the discounts or commissions we may pay them for their services.

Merrill Lynch, Pierce, Fenner & Smith Incorporated, or any of our other affiliates, may be an underwriter, dealer, or agent for us.

### **Market-Making by Our Affiliates**

Following the initial distribution of an offering of securities, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and other affiliates of ours may offer and sell those securities in the course of their businesses as broker-dealers. Merrill Lynch, Pierce, Fenner & Smith Incorporated and any such other affiliates may act as a principal or agent in these transactions. This prospectus and the applicable supplement or supplements also will be used in connection with these market-making transactions. Sales in any of these market-making transactions will be made at varying prices related to prevailing market prices and other circumstances at the time of sale.

If you purchase securities in a market-making transaction, you will receive information about the purchase price and your trade and settlement dates in a separate confirmation of sale.

[Table of Contents](#)**Ratio of Earnings to Fixed Charges and Ratio of Earnings to Fixed Charges and Preferred Dividends**

The following table sets forth our consolidated ratios of earnings to fixed charges and earnings to fixed charges and preferred dividends for the periods indicated.

|  | Nine Months Ended<br>September 30, 2014 | Year Ended December 31 |      |      |      |      |
|--|---|------------------------|------|------|------|------|
|  |   | 2013                   | 2012 | 2011 | 2010 | 2009 |
| Ratio of earnings to fixed charges (excluding interest on deposits) <sup>1</sup>                           | 1.27                                    | 2.29                   | 1.21 | 1.02 | 0.99 | 1.10 |
| Ratio of earnings to fixed charges (including interest on deposits) <sup>1</sup>                           | 1.25                                    | 2.16                   | 1.18 | 1.02 | 1.00 | 1.08 |
| Ratio of earnings to fixed charges and preferred dividends (excluding interest on deposits) <sup>1,2</sup> | 1.13                                    | 2.01                   | 1.13 | 1.02 | 0.96 | 0.89 |
| Ratio of earnings to fixed charges and preferred dividends (including interest on deposits) <sup>1,2</sup> | 1.12                                    | 1.92                   | 1.12 | 1.02 | 0.96 | 0.91 |

<sup>1</sup> The earnings for 2010 were inadequate to cover fixed charges, and fixed charges and preferred dividends. The earnings deficiency is a result of \$12.4 billion of goodwill impairment charges during 2010. The coverage deficiency for fixed charges was \$113 million and the coverage deficiency for fixed charges and preferred dividends was \$915 million for 2010.

<sup>2</sup> The earnings for 2009 were inadequate to cover fixed charges and preferred dividends. The earnings deficiency is a result of 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.

## RISK FACTORS

*This section summarizes some specific risks and investment considerations with respect to an investment in our securities. This summary does not describe all of the risks and investment considerations with respect to an investment in our securities, including risks and considerations relating to a prospective investor's particular circumstances. For information regarding risks and uncertainties that may materially affect our business and results, please refer to the information under the captions "Item 1A. Risk Factors" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in our annual report on Form 10-K for the year ended December 31, 2013, which is incorporated by reference in this prospectus, as well as those risks and uncertainties discussed in our subsequent filings that are incorporated by reference in this prospectus. You should also review the risk factors that will be set forth in other documents that we will file after the date of this prospectus, together with the risk factors set forth in any applicable supplement. Prospective investors should consult their own financial, legal, tax, and other professional advisors as to the risks associated with an investment in our securities and the suitability of the investment for the investor.*

### Currency Risks

We may issue securities denominated in or whose principal and/or interest is payable in a currency other than U.S. dollars, which we refer to as "Non-U.S. Dollar-Denominated Securities." If you intend to invest in any Non-U.S. Dollar-Denominated Securities, you should consult your own financial and legal advisors as to the currency risks related to your investment. The Non-U.S. Dollar-Denominated Securities are not an appropriate investment for you if you are not knowledgeable about the significant terms and conditions of the Non-U.S. Dollar-Denominated Securities, non-U.S. dollar currency transactions, or financial matters in general. The information in this prospectus is directed primarily to investors who are U.S. residents. Investors who are not U.S. residents should consult their own financial and legal advisors about currency-related risks arising from their investment.

**An investment in a Non-U.S. Dollar-Denominated Security involves currency-related risks.** An investment in a Non-U.S. Dollar-Denominated Security entails significant risks that are not associated with a similar investment in a security that is payable solely in U.S. dollars. These risks include possible significant changes in rates of exchange between the U.S. dollar and the relevant non-U.S. dollar currency or currencies and the imposition or modification of foreign exchange controls or other conditions by either the United States or non-U.S. governments. These risks generally depend on factors over which we have no control, such as economic and political events and the supply of and demand for the relevant currencies in the global markets.

**Changes in currency exchange rates can be volatile and may adversely affect an investment in Non-U.S. Dollar-Denominated Securities.** In recent years, exchange rates between the U.S. dollar and other currencies have been highly volatile. This volatility may continue and could spread to other currencies in the future. Fluctuations in currency exchange rates could affect adversely an investment in a Non-U.S. Dollar-Denominated Security, and such changes in exchange rates may vary considerably during the life of that security. Depreciation of the specified currency against the U.S. dollar could result in a decrease in the U.S. dollar-equivalent value of payments on the Non-U.S. Dollar-Denominated Securities, including the principal payable at maturity or the redemption amount payable upon those securities. That in turn could cause the market value of the Non-U.S. Dollar-Denominated Securities to fall.

**We will not adjust Non-U.S. Dollar-Denominated Securities to compensate for changes in foreign currency exchange rates.** Except as described below or in a supplement, we will not make any adjustment in or change to the terms of the Non-U.S. Dollar-Denominated

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Securities for changes in the foreign currency exchange rate for the relevant currency, including any devaluation, revaluation, or imposition of exchange or other regulatory controls or taxes, or for other developments affecting that currency, the U.S. dollar, or any other currency. Consequently, you will bear the risk that your investment may be affected adversely by these types of events.

**Government policy can adversely affect foreign currency exchange rates and an investment in a Non-U.S. Dollar-Denominated Security.** Foreign currency exchange rates either can float or be fixed by sovereign governments. Governments or governmental bodies, including the European Central Bank, may intervene from time to time in their economies to alter the exchange rate or exchange characteristics of their currencies. For example, a central bank may intervene to devalue or revalue a currency or to replace an existing currency. In addition, a government may impose regulatory controls or taxes to affect the exchange rate of its currency or may issue a new currency or replace an existing currency. As a result, the yield or payout of a Non-U.S. Dollar-Denominated Security could be affected significantly and unpredictably by governmental actions. Even in the absence of governmental action directly affecting currency exchange rates, political or economic developments in the country or region issuing the specified currency for a Non-U.S. Dollar-Denominated Security or elsewhere could result in significant and sudden changes in the exchange rate between the U.S. dollar and the specified currency. Changes in exchange rates could affect the value of the Non-U.S. Dollar-Denominated Securities as participants in the global currency markets move to buy or sell the specified currency or U.S. dollars in reaction to these developments.

If a governmental authority imposes exchange controls or other conditions, such as taxes on the exchange or transfer of the specified currency, there may be limited availability of the specified currency for payment on the Non-U.S. Dollar-Denominated Securities at their maturity or on any other payment date. In addition, the ability of a holder to move currency freely out of the country in which payment in the currency is received or to convert the currency at a freely determined market rate could be limited by governmental actions.

**Non-U.S. Dollar-Denominated Securities may permit us to make payments in U.S. dollars if we are unable to obtain the specified currency.** The terms of any Non-U.S. Dollar-Denominated Securities may provide that we may have the right to make a payment in U.S. dollars instead of the specified currency, if at or about the time when the payment on the Non-U.S. Dollar-Denominated Securities comes due, the specified currency is subject to convertibility, transferability, market disruption, or other conditions affecting its availability because of circumstances beyond our control. These circumstances could include the imposition of exchange controls, our inability to obtain the specified currency because of a disruption in the currency markets for the specified currency, or unavailability because the specified currency is no longer used by the government of the relevant country or for settlement of transactions by public institutions of or within the international banking community. The exchange rate used to make payment in U.S. dollars may be based on limited information and would involve significant discretion on the part of our exchange rate agent. As a result, the value of the payment in U.S. dollars may be less than the value of the payment you would have received in the specified currency if the specified currency had been available. The exchange rate agent will generally not have any liability for its determinations.

**An investor may bear foreign currency exchange risk in a lawsuit for payment on Non-U.S. Dollar-Denominated Securities.** Any Non-U.S. Dollar-Denominated Securities typically will be governed by New York law. Under Section 27 of the New York Judiciary Law, a state court in the State of New York rendering a judgment on the Non-U.S. Dollar-Denominated Debt Securities would be required to render the judgment in the specified currency. In turn, the judgment would be converted into U.S. dollars at the exchange rate prevailing on the date of entry

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of the judgment. Consequently, in a lawsuit for payment on the Non-U.S. Dollar-Denominated Securities, you would bear currency exchange risk until judgment is entered, which could be a long time.

In courts outside of New York, you may not be able to obtain judgment in a specified currency other than U.S. dollars. For example, a judgment for money in an action based on Non-U.S. Dollar-Denominated Securities in many other U.S. federal or state courts ordinarily would be enforced in the United States only in U.S. dollars. The date and method used to determine the rate of conversion of the specified currency into U.S. dollars will depend on various factors, including which court renders the judgment.

**Information about foreign currency exchange rates may not be indicative of future performance.** If we issue a Non-U.S. Dollar-Denominated Security, we may include in the applicable supplement information about historical exchange rates for the relevant non-U.S. dollar currency or currencies. Any information about exchange rates that we may provide will be furnished as a matter of information only, and you should not regard the information as indicative of the range of, or trends in, fluctuations in currency exchange rates that may occur in the future.

### **Reform of LIBOR and EURIBOR and Proposed Regulation of These and Other “Benchmarks”**

The London Interbank Offered Rate (“LIBOR”), the Euro Interbank Offered Rate (“EURIBOR”), and other indices which are deemed “benchmarks” are the subject of recent national, international, and other regulatory guidance and proposals for reform. Some of these reforms are already effective while others are still to be implemented. These reforms may cause such benchmarks to perform differently than in the past, or have other consequences which cannot be predicted.

In September 2012, the U.K. government published the results of its review of LIBOR (commonly referred to as the “Wheatley Review”). The Wheatley Review made a number of recommendations for changes with respect to LIBOR including the introduction of statutory regulation of LIBOR, the transfer of responsibility for LIBOR from the British Bankers’ Association to an independent administrator, changes to the method of compilation of lending rates and new regulatory oversight and enforcement mechanisms for rate-setting. Based on the Wheatley Review, final rules for the regulation and supervision of LIBOR by the Financial Conduct Authority (the “FCA”) were published and came into effect on April 2, 2013 (the “FCA Rules”). In particular, the FCA Rules include requirements that (i) an independent LIBOR administrator monitor and survey LIBOR submissions to identify breaches of practice standards and/or potentially manipulative behavior, and (ii) firms submitting data to LIBOR establish and maintain a clear conflicts of interest policy and appropriate systems and controls. In response to the Wheatley Review recommendations, ICE Benchmark Administration Limited (the “ICE Administration”) has been appointed as the independent LIBOR administrator, effective February 1, 2014.

It is not possible to predict the effect of the FCA Rules, any changes in the methods pursuant to which the LIBOR rates are determined, and any other reforms to LIBOR that will be enacted in the U.K., which may adversely affect the trading market for LIBOR-based securities. In addition, any changes announced by the FCA, the ICE Administration, or any other successor governance or oversight body in the method pursuant to which the LIBOR rates are determined may result in a sudden or prolonged decrease (or increase) in the reported LIBOR rates. If that were to occur, the level of interest payments on and the trading value of LIBOR-based securities may be adversely affected. Further, uncertainty as to the extent and manner in which the Wheatley Review recommendations will continue to be adopted and the timing of such changes may adversely affect the current trading market for LIBOR-based securities.

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At an international level, proposals for the reform of “benchmarks” include (i) IOSCO’s Principles for Financial Market Benchmarks (July 2013), (ii) ESMA-EBA’s Principles for the benchmark-setting process (June 2013), and (iii) the European Commission’s proposed regulation on indices used as “benchmarks” in certain financial instruments, financial contracts and investment funds (September 2013) (the “Proposed Benchmark Regulation”).

The Proposed Benchmark Regulation, if passed in its current form, would apply to “contributors,” “administrators” and “users” of “benchmarks” in the European Union, and would, among other things, (i) require benchmark administrators to be authorized (or, if non-European Union-based, to be subject to an equivalent regulatory regime) and to comply with extensive requirements in relation to the administration of “benchmarks” and (ii) ban the use of “benchmarks” of unauthorized administrators. The scope of the Proposed Benchmark Regulation is wide and, in addition to so-called “critical benchmark” indices such as LIBOR and EURIBOR, could also potentially apply to many interest rate and foreign exchange rate indices, equity indices, and other indices (including “proprietary” indices or strategies) where referenced in financial instruments, financial contracts, and investment funds.

It is presently unclear whether the Proposed Benchmark Regulation will be passed in its current form (and in particular, whether it will have the broad scope currently envisaged) and, if so, when it would become effective. However, if so enacted, it could potentially have a material impact on any securities based on or linked to a “benchmark” index in a range of circumstances including, without limitation, where:

- the administrator of an index which is a “benchmark” relating to a series of securities does not have or obtain or ceases to have the appropriate European Union authorizations in order to operate such a “benchmark” or is based in a non-European Union jurisdiction which does not have equivalent regulation. In such an event, depending on the particular “benchmark” and the applicable terms of the securities, the securities could be de-listed (if listed) or may otherwise be adversely affected; and
- the methodology or other terms of the “benchmark” relating to a series of securities is changed in order to comply with the terms of the Proposed Benchmark Regulation, and such changes have the effect of reducing or increasing the published rate or level of the “benchmark” or of affecting the volatility of such published rate or level, or otherwise result in an adverse effect on the trading market for, return on or the value of the relevant securities.

More broadly, the FCA Rules, the Proposed Benchmark Regulation, and any of the other international, national, or other proposals for reform or general increased regulatory scrutiny of “benchmarks” could have a material adverse effect on the costs and risks of administering or otherwise participating in the setting of a “benchmark” and complying with any such regulations or requirements. Such factors may have the effect of discouraging market participants from continuing to administer or participate in certain “benchmarks,” trigger changes in the rules or methodologies used in the determination of certain “benchmarks,” or may even lead to the disappearance of certain “benchmarks.” The disappearance of, or uncertainty relating to the continued existence of, a “benchmark” or changes in the manner of determination of or administration of a “benchmark” may adversely affect the trading market for, return on, or value of “benchmark”-based securities.

In addition to the international proposals for the reform of “benchmarks” described above, there are numerous other proposals, initiatives, and investigations which may impact the use and regulation of “benchmarks.” For example, there are ongoing global investigations into the setting of



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foreign exchange rate “benchmarks,” which may result in further regulation around the setting of foreign exchange rates.

Any of the above changes or any other consequential changes to LIBOR, EURIBOR, or any other “benchmark” as a result of U.K., European Union, or other international, national, or other proposals for reform or other initiatives or investigations, or any further uncertainty in relation to the timing and manner of implementation of such changes could have a material adverse effect on the value of and return on any securities based on or linked to a “benchmark.”

### **Risks Related to Our Common Stock and Preferred Stock**

**You may not receive dividends on our common stock.** Holders of our common stock are only entitled to receive such dividends as our board of directors may declare out of funds legally available for such payments. Furthermore, holders of our common stock are subject to the prior dividend rights of holders of our preferred stock or the depositary shares representing such preferred stock then outstanding. Although we have historically declared cash dividends on our common stock, we are not required to do so and may reduce or eliminate our common stock dividend in the future.

**Our common stock is equity and is subordinate to our existing and future indebtedness and preferred stock.** Shares of our common stock are equity interests in us and do not constitute indebtedness. This means that shares of our common stock will rank junior to all of our indebtedness and to other non-equity claims against us and our assets available to satisfy claims against us, including claims in our liquidation. Additionally, holders of our common stock are subject to the prior dividend and liquidation rights of holders of our outstanding preferred stock or depositary shares representing interests in such preferred stock then outstanding. Our board of directors is authorized to issue additional classes or series of preferred stock without any action on the part of the holders of our common stock. As of the date of this prospectus, the aggregate liquidation preference of all our outstanding preferred stock was approximately \$22.7 billion.

**Our preferred stock is equity and is subordinate to our existing and future indebtedness.** Shares of our preferred stock are equity interests in us and do not constitute indebtedness. This means that shares of our preferred stock and any depositary shares which represent interests in shares of our preferred stock will rank junior to all of our indebtedness and to other non-equity claims against us and our assets available to satisfy claims against us, including claims in our liquidation. Our existing and future indebtedness may restrict payment of dividends on our preferred stock. In addition, holders of our preferred stock or depositary shares representing interests in shares of our preferred stock may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation, or similar proceeding.

**Cash dividends on our preferred stock are subject to certain limitations.** Unlike indebtedness, where principal and interest customarily are payable on specified due dates, in the case of our preferred stock, (1) dividends are payable only when, as and if declared by our board of directors or a duly authorized committee of the board and (2) as a corporation, we are subject to restrictions on dividend payments and redemption payments out of legally available funds. In addition, under the Federal Reserve Board’s risk-based capital rules related to additional Tier 1 capital instruments, dividends on our preferred stock may only be paid out of our net income and retained earnings.

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**Our ability to pay dividends on our common stock and preferred stock may be limited by extensive and changing regulatory considerations.** We and our broker-dealer, bank, and other subsidiaries are subject to extensive laws, regulations, and rules, both in the U.S. and internationally, that may limit directly or indirectly the payment of dividends on our common stock and preferred stock. U.S. federal banking regulators are authorized to determine, under certain circumstances relating to the financial condition of a bank or a bank holding company, like Bank of America Corporation, that the payment of dividends would be an unsafe or unsound practice and to prohibit payment of those dividends. For instance, Federal Reserve Board regulations require us to submit a capital plan as part of an annual Comprehensive Capital Analysis and Review in order to assess our capital planning process, including any planned capital actions, such as payment of dividends on common stock and common stock repurchases. Furthermore, many rules and regulations are in proposed form and subject to periods of significant comment and further revisions. As a result, there is considerable uncertainty about what the final versions of these proposed rules and regulations will be or the impact they may have on us and our subsidiaries. While we closely monitor various regulatory developments and intend to manage our assets and liabilities and our operations to comply with new laws, regulations, and rules at the time they become effective, there is no assurance that we will be compliant with all such laws, regulations, and rules at such times and a failure to be so compliant could adversely affect our ability to pay dividends on our common stock and preferred stock.

**If we are deferring payments on our outstanding junior subordinated notes or are in default under the indentures governing those securities, we will be prohibited from making distributions on our common stock and preferred stock, or redeeming our preferred stock.** The terms of our outstanding junior subordinated notes prohibit us from declaring or paying any dividends or distributions on our common stock and preferred stock, or redeeming, purchasing, acquiring, or making a liquidation payment on such stock, if we are aware of any event that would be an event of default under the indenture governing those junior subordinated notes or at any time when we have deferred payment of interest on those junior subordinated notes.

### **Other Risks**

**Our ability to pay dividends on our common stock and preferred stock and to make payments on our other securities depends upon the results of operations of our subsidiaries.** As a holding company, we conduct substantially all of our operations through our subsidiaries and depend on dividends, distributions, and other payments from our banking and nonbank 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, including our bank and broker-dealer subsidiaries, are subject to laws that restrict dividend payments or authorize regulatory bodies to block or reduce the flow of funds from those subsidiaries to us or to our other subsidiaries. In addition, our bank and broker-dealer subsidiaries are subject to restrictions on their ability to lend or transact with affiliates and to minimum regulatory capital and liquidity requirements. These restrictions could prevent those subsidiaries from making distributions to us or otherwise providing cash to us that we need in order to make payments on the securities.

**Our obligations on the securities will be structurally subordinated to liabilities of our subsidiaries.** Because we are a holding company, our right to participate in any distribution of assets of any subsidiary upon such subsidiary's liquidation or reorganization or otherwise is subject to the prior claims of creditors of that subsidiary, except to the extent we may ourselves be recognized as a creditor of that subsidiary. As a result, our obligations under the securities will be structurally subordinated to all existing and future liabilities of our subsidiaries, and claimants should look only to our assets for payments.

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**We cannot assure you that a trading market for your securities will ever develop or be maintained.** We may not list our securities on any securities exchange. We cannot predict how these securities will trade in the secondary market or whether that market will be liquid or illiquid. The number of potential buyers of our securities in any secondary market may be limited. Although any underwriters or agents may purchase and sell our securities in the secondary market from time to time, these underwriters or agents will not be obligated to do so and may discontinue making a market for the securities at any time without giving us notice. We cannot assure you that a secondary market for any of our securities will develop, or that if one develops, it will be maintained.

**Redemption of the securities prior to maturity may result in a reduced return on your investment.** The terms of our securities may permit or require redemption of the securities prior to maturity. That redemption may occur at a time when prevailing interest rates are relatively low. As a result, in the case of debt or similar securities, a holder of the redeemed securities may not be able to invest the redemption proceeds in a new investment that yields a similar return.

**Payments on the securities are subject to our credit risk, and actual or perceived changes in our creditworthiness may affect the value of the notes.** Our credit ratings are an assessment of our ability to pay our obligations. Consequently, our perceived creditworthiness and actual or anticipated changes in our credit ratings may affect the market value of our securities. However, because the return on our securities generally depends upon factors in addition to our ability to pay our obligations, an improvement in our credit ratings will not reduce the other investment risks, if any, related to our securities.

**BANK OF AMERICA CORPORATION**

Bank of America 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, 100 North Tryon Street, Charlotte, North Carolina 28255 and our telephone number is (704) 386-5681. Through our banking and various nonbank subsidiaries throughout the United States and in international markets, we provide a diversified range of banking and nonbank financial services and products.

**USE OF PROCEEDS**

Unless we describe a different use in the applicable supplement, we will use the net proceeds from the sale of the securities for general corporate purposes. General corporate purposes include, but are not limited to, the following:

- our working capital needs;
- the funding of investments in, or extensions of credit to, our subsidiaries;
- possible reductions, redemptions, or repurchases of outstanding indebtedness;
- possible repayments on outstanding indebtedness;
- the possible acquisitions of, or investments in, other financial institutions or other businesses; and
- other uses in the ordinary course of conducting our business.

Until we designate the use of these net proceeds, we will invest them temporarily. From time to time, we may engage in additional financings as we determine appropriate based on our needs and prevailing market conditions. These additional financings may include the sale of other securities.

## DESCRIPTION OF DEBT SECURITIES

### General

We may issue senior or subordinated debt securities. Neither the senior debt securities nor the subordinated debt securities will be secured by any of our property or assets. As a result, by owning a debt security, you are one of our unsecured creditors.

The senior debt securities will constitute part of our senior debt, will be issued under our senior debt indenture described below, and will rank equally with all of our other unsecured and unsubordinated debt.

The subordinated debt securities will constitute part of our subordinated debt, will be issued under our subordinated debt indenture described below, and will be subordinated in right of payment to all of our "senior indebtedness," as defined in the subordinated debt indenture. Neither the senior debt indenture nor the subordinated debt indenture limits our ability to incur additional "senior indebtedness."

### The Indentures

The senior debt securities and the subordinated debt securities each are governed by a document called an indenture, which is a contract between us and the applicable trustee. Senior debt securities will be issued under the Indenture dated as of January 1, 1995 (as supplemented, the "Senior Indenture") between us and The Bank of New York Mellon Trust Company, N.A., as successor trustee, and subordinated debt securities will be issued under the Indenture dated as of January 1, 1995 (as supplemented, the "Subordinated Indenture") between us and The Bank of New York Mellon Trust Company, N.A., as successor trustee. The indentures are substantially identical, except for:

- the covenant described below under "—Sale or Issuance of Capital Stock of Banks," which is included only in the Senior Indenture;
- the provisions relating to subordination described below under "—Subordination," which are included only in the Subordinated Indenture; and
- the events of default described below under "—Events of Default and Rights of Acceleration," many of which are not included in the Subordinated Indenture.

In this prospectus, when we refer to "debt securities," we mean both our senior debt securities and our subordinated debt securities, and when we refer to the "indenture" or the "trustee" with respect to any debt securities, we mean the indenture under which those debt securities are issued and the trustee under that indenture.

The trustee under each indenture has two principal functions:

- First, the trustee can enforce your rights against us if we default. However, there are limitations on the extent to which the trustee may act on your behalf, which we describe below under "—Collection of Indebtedness."
- Second, the trustee performs administrative duties for us, including the delivery of interest payments and notices.

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Neither indenture limits the aggregate amount of debt securities that we may issue or the number of series or the aggregate amount of any particular series. The indentures and the debt securities also do not limit our ability to incur other indebtedness or to issue other securities. This means that we may issue additional debt securities and other securities at any time without your consent and without notifying you. In addition, neither indenture contains provisions protecting holders against a decline in our credit quality resulting from takeovers, recapitalizations, the incurrence of additional indebtedness, or restructuring. If our credit quality declines as a result of an event of this type, or otherwise, any ratings of our debt securities then outstanding may be withdrawn or downgraded.

This section is a summary of the indentures and is subject to and qualified in its entirety by reference to all the provisions of the indentures. We have filed the indentures with the SEC as exhibits to our registration statement, and they are incorporated in this prospectus by reference. See “Where You Can Find More Information” below for information on how to obtain copies of the indentures. Whenever we refer to the defined terms of the indentures in this prospectus or in a supplement without defining them, the terms have the meanings given to them in the indentures. You must look to the indentures for the most complete description of the information summarized in this prospectus.

### **Form and Denomination of Debt Securities**

Unless we specify otherwise in the applicable supplement, we will issue each debt security in book-entry form. Debt securities in book-entry form will be represented by a global security registered in the name of a depository. Accordingly, the depository will be the holder of all the debt securities represented by the global security. Those who own beneficial interests in a global security will do so through participants in the depository’s securities clearing system, and the rights of these indirect owners will be governed solely by the applicable procedures of the depository and its participants. We describe the procedures applicable to book-entry securities below under the heading “Registration and Settlement.”

Generally, all securities represented by the same global security will have the same terms. We may, however, issue a global security that represents multiple debt securities that have different terms and are issued at different times. We call this kind of global security a master global security. Your prospectus supplement will not indicate whether your debt securities are represented by a master global security.

Unless we specify otherwise in the applicable supplement, we will issue our debt securities in fully registered form, without coupons. If we issue a debt security in bearer form, we will describe the special considerations applicable to bearer securities in the applicable supplement. Some of the features that we describe in this prospectus may not apply to the bearer securities.

Our debt securities may be denominated, and cash payments with respect to the debt securities may be made, in U.S. dollars or in another currency, or in a composite currency, a basket of currencies, or a currency unit or units. Unless we specify otherwise in the applicable supplement, the debt securities will be denominated, and cash payments with respect to the debt securities will be made, in U.S. dollars, and the debt securities ordinarily will be issued in denominations of \$1,000 and multiples of \$1,000 in excess of \$1,000. We may also issue debt securities that are denominated in units of \$10. If any of the debt securities are denominated, or if principal, any premium, interest, and any other amounts payable on any of the debt securities is payable, in a foreign currency, or in a composite currency, a basket of currencies, or a currency unit or units, the specified currency, as well as any additional investment considerations, risk factors, restrictions, tax consequences, specific terms and other information relating to that issue of debt securities and

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the specified currency, composite currency, basket of currencies, or currency unit or units, may be described in the applicable supplement. We describe some of those investment considerations relating to securities denominated or payable in a currency other than U.S. dollars above under the heading “Risk Factors.”

### **Different Series of Debt Securities**

We may issue our debt securities from time to time in one or more series with the same or different maturities. We also may “reopen” a series of our debt securities. This means that we can increase the principal amount of a series of our debt securities by selling additional debt securities with the same terms, provided that such additional notes shall be fungible for U.S. federal income tax purposes. We may do so without notice to the existing holders of securities of that series. However, any new securities of this kind may begin to bear interest at a different date.

This section of the prospectus summarizes the material terms of the debt securities that are common to all series. We will describe the financial and other specific terms of the series of debt securities being offered in the applicable supplement. The supplement also may describe any differences from the material terms described in this prospectus. If there are any differences between the applicable supplement and this prospectus, the applicable supplement will control.

The terms of your series of debt securities as described in the applicable supplement may include the following:

- the title and type of the debt securities;
- the principal amount of the debt securities;
- the minimum denominations, if other than \$1,000 and multiples of \$1,000 in excess of \$1,000;
- the percentage of the stated principal amount at which the debt securities will be sold and, if applicable, the method of determining the price;
- the person to whom interest is payable, if other than the owner of the debt securities;
- the maturity date or dates;
- the interest rate or rates, which may be fixed or variable, and the method used to calculate that interest;
- any index or other reference asset or assets that will be used to determine the amounts of any payments on the debt securities and the manner in which those amounts will be determined;
- the interest payment dates, the regular record dates for the interest payment dates, and the date interest will begin to accrue;
- the place or places where payments on the debt securities may be made and the place or places where the debt securities may be presented for registration of transfer or exchange;
- any date or dates after which the debt securities may be redeemed, repurchased, or repaid in whole or in part at our option or the option of the holder, and the periods, prices, terms, and conditions of that redemption, repurchase, or repayment;

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- if other than the full principal amount, the portion of the principal amount of the debt securities that will be payable if their maturity is accelerated;
- the currency of principal, any premium, interest, and any other amounts payable on the debt securities, if other than U.S. dollars;
- if the debt securities will be issued in other than book-entry form;
- the identification of or method of selecting any calculation agents, exchange rate agents, or any other agents for the debt securities;
- any provisions for the discharge of our obligations relating to the debt securities by the deposit of funds or U.S. government obligations;
- any provisions relating to the extension or renewal of the maturity date of the debt securities;
- whether the debt securities will be listed on any securities exchange; or
- any other terms of the debt securities that are permitted under the applicable indenture.

### **Fixed-Rate Notes**

*General.* We may issue debt securities that bear interest at one or more fixed rates of interest, as specified in the applicable supplement. We refer to these as “fixed-rate notes.” Unless we specify otherwise in the applicable supplement, each fixed-rate note will bear interest from its original issue date or from the most recent date to which interest on the note has been paid or made available for payment. Interest will accrue on the principal of a fixed-rate note at the fixed annual rate stated in the applicable supplement, until the principal is paid or made available for payment or the note is converted or exchanged.

Unless we specify otherwise in the applicable supplement, we will pay interest on any fixed-rate note quarterly, semi-annually, or annually, as applicable, in arrears, on the days set forth in the applicable supplement (each such day being an “interest payment date” for a fixed-rate note) and at maturity. Each interest payment due on an interest payment date or the maturity date will include interest accrued from and including the most recent interest payment date to which interest has been paid, or, if no interest has been paid, from the original issue date, to but excluding the next interest payment date or the maturity date, as the case may be. Unless we specify otherwise in the applicable supplement, interest on fixed-rate notes will be computed and paid on the basis of a 360-day year consisting of twelve 30-day months. We will make payments on fixed-rate notes as described below under the heading “—Payment of Principal, Interest, and Other Amounts Due.”

*Amortizing Notes.* We also may issue amortizing notes, which are fixed-rate notes for which combined principal and interest payments are made in installments over the life of the debt security. Payments on amortizing notes are applied first to interest due and then to the reduction of the unpaid principal amount. The supplement for an amortizing note will include a table setting forth repayment information.

### **Floating-Rate Notes**

*General.* We may issue debt securities that will bear interest at a floating rate of interest determined by reference to one or more interest rate bases, or by reference to one or more interest



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rate formulae, referred to as the “base rate.” We refer to these debt securities as “floating-rate notes.” The base rate may be one or more of the following:

- the federal funds rate, in which case the debt security will be a “federal funds rate note”;
- the London interbank offered rate, in which case the debt security will be a “LIBOR note”;
- the euro interbank offered rate, in which case the debt security will be a “EURIBOR note”;
- the prime rate, in which case the debt security will be a “prime rate note”;
- the treasury rate, in which case the debt security will be a “treasury rate note”; or
- any other interest rate formula as may be specified in the applicable supplement.

The interest rate for a floating-rate note will be determined by reference to:

- the specified base rate based on the index maturity;
- plus or minus the spread, if any; and/or
- multiplied by the spread multiplier, if any.

For any floating-rate note, the “index maturity” is the period to maturity of the instrument for which the interest rate basis is calculated and will be specified in the applicable supplement. The “spread” is the number of basis points we specify on the floating-rate note to be added to or subtracted from the base rate. The “spread multiplier” is the percentage we may specify on the floating-rate note by which the base rate is multiplied in order to calculate the applicable interest rate.

A floating-rate note also may be subject to:

- a maximum interest rate limit, or ceiling, on the interest that may accrue during any interest period;
- a minimum interest rate limit, or floor, on the interest that may accrue during any interest period; or
- both.

In addition, the interest rate on a floating-rate note may not be higher than the maximum rate permitted by New York law, as that rate may be modified by United States law of general application. Under current New York law, the maximum rate of interest, subject to some exceptions, for any loan in an amount less than \$250,000 is 16% and for any loan in the amount of \$250,000 or more but less than \$2,500,000 is 25% per annum on a simple interest basis. These limits do not apply to loans of \$2,500,000 or more.

Unless we specify otherwise in the applicable supplement, each floating-rate note will bear interest from its original issue date or from the most recent date to which interest on the note has been paid or made available for payment. Interest will accrue on the principal of a floating-rate note at the annual rate determined according to the interest rate formula stated in the applicable supplement, until the principal is paid or made available for payment. Unless we specify otherwise

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in the applicable supplement, we will pay interest on any floating-rate note monthly, quarterly, semi-annually, or annually, as applicable, in arrears, on the days set forth in the applicable supplement (each such day being an “interest payment date” for a floating-rate note) and at maturity. Unless we specify otherwise in the applicable supplement, each interest payment due on an interest payment date or the maturity date will include interest accrued from and including the most recent interest payment date to which interest has been paid, or, if no interest has been paid, from the original issue date, to but excluding the next interest payment date or the maturity date, as the case may be (each such period, an “interest period”). We will make payments on floating-rate notes as described below under the heading “—Payment of Principal, Interest and Other Amounts Due.”

*How Interest Is Reset.* The interest rate in effect from the date of issue to the first interest reset date for a floating-rate note will be the initial interest rate determined as described in the applicable supplement. The interest rate of each floating-rate note may be reset daily, weekly, monthly, quarterly, semi-annually, or annually, as we specify in the applicable supplement. We refer to each date on which the interest rate for a floating-rate note will reset as an “interest reset date.”

The “interest determination date” for any interest reset date is the day the calculation agent will refer to when determining the new interest rate at which a floating rate will reset. Unless we specify otherwise in the applicable supplement, the interest determination date for an interest reset date will be:

- for a federal funds rate note or a prime rate note, the business day immediately preceding the interest reset date;
- for a LIBOR note, the second London Banking Day (as defined below) preceding the interest reset date unless the index currency is pounds sterling, in which case the interest determination date will be the interest reset date;
- for a EURIBOR note, the second TARGET Settlement Date (as defined below) preceding the interest reset date;
- for a treasury rate note, the day of the week in which the interest reset date falls on which Treasury bills (as described below) of the applicable index maturity would normally be auctioned; and
- for a floating-rate note with two or more base rates, the interest determination date will be the most recent business day that is at least two business days prior to the applicable interest reset date on which each applicable base rate is determinable.

Treasury bills usually are sold at auction on Monday of each week, unless that day is a legal holiday, in which case the auction usually is held on the following Tuesday, except that the auction may be held on the preceding Friday. If, as a result of a legal holiday, an auction is held on the preceding Friday, that preceding Friday will be the interest determination date pertaining to the interest reset date occurring in the next succeeding week. The treasury rate will be determined as of that date, and the applicable interest rate will take effect on the applicable interest reset date.

We will specify the interest reset dates in the applicable supplement. Unless we specify otherwise in the applicable supplement, if any interest reset date for any floating-rate note falls on a day that is not a business day for the floating-rate note, the interest reset date for the floating-rate note will be postponed to the next day that is a business day for the floating-rate note. However, unless we specify otherwise in the applicable supplement, in the case of a LIBOR note or

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a EURIBOR note, if the next business day is in the next succeeding calendar month, the interest reset date will be the immediately preceding business day. If Treasury bills are sold at an auction that falls on a day that is an interest reset date, that interest reset date will be the next following business day. The interest reset dates are subject to adjustment as described below under the heading “—Payment of Principal, Interest, and Other Amounts Due.”

*Calculation of Interest.* Calculations relating to floating-rate notes will be made by the calculation agent, which will be an institution that we appoint as our agent for this purpose. The calculation agent may be one of our affiliates, including Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Commodities, Inc., or Merrill Lynch Capital Services, Inc. and may also be The Bank of New York Mellon Trust Company, N.A. We will identify in the applicable supplement the calculation agent we have appointed for a particular series of debt securities as of its original issue date. We may appoint different calculation agents from time to time after the original issue date of a floating-rate note without your consent and without notifying you of the change. Absent manifest error, all determinations of the calculation agent will be final and binding on you, the trustee and us.

For each floating-rate note, the calculation agent will determine, on the corresponding calculation or interest determination date, the interest rate for the applicable interest period. In addition, the calculation agent will calculate the amount of interest that has accrued during each interest period. Unless we specify otherwise in the applicable supplement, the calculation date for any interest determination date will be the date by which the calculation agent computes the amount of interest owed on a floating-rate note for the related interest period. Unless we specify otherwise in the applicable supplement, the calculation date pertaining to an interest determination date will be the earlier of:

- the tenth calendar day after that interest determination date or, if that day is not a business day, the next succeeding business day; or
- the business day immediately preceding the applicable interest payment date, the maturity date, or the date of redemption or prepayment, as the case may be.

Accrued interest on a floating-rate note is calculated by multiplying the principal amount of a note by an accrued interest factor. This accrued interest factor is the sum of the interest factors calculated for each day in the period for which accrued interest is being calculated. Unless we specify otherwise in the applicable supplement, the accrued interest factor will be computed and interest will be paid (including payments for partial periods) as follows:

- for federal funds rate notes, LIBOR notes, EURIBOR notes, prime rate notes, or any other floating-rate notes other than treasury rate notes, the daily interest factor will be computed by dividing the interest rate in effect on that day by 360; and
- for treasury rate notes, the daily interest factor will be computed by dividing the interest rate in effect on that day by 365 or 366, as applicable.

All amounts used in or resulting from any calculation on floating-rate notes will be rounded to the nearest cent, in the case of U.S. dollars, or to the nearest corresponding hundredth of a unit, in the case of a currency other than U.S. dollars, with one-half cent or one-half of a corresponding hundredth of a unit or more being rounded upward. Unless we specify otherwise in the applicable supplement, all percentages resulting from any calculation with respect to a floating-rate note will be rounded, if necessary, to the nearest one hundred-thousandth of a percent, with five one-millionths of a percentage point rounded upwards, e.g., 9.876545% (or .09876545) being rounded to 9.87655% (or .0987655).

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In determining the base rate that applies to a floating-rate note during a particular interest period, the calculation agent may obtain rate quotes from various banks or dealers active in the relevant market, as described in the descriptions of the base rates below and/or in the applicable supplement. Those reference banks and dealers may include the calculation agent itself and its affiliates, as well as any underwriter, dealer, or agent participating in the distribution of the relevant floating-rate notes and its affiliates, and they may include our affiliates.

At the request of the holder of any floating-rate note, the calculation agent will provide the interest rate then in effect for that floating-rate note and, if already determined, the interest rate that is to take effect on the next interest reset date.

*LIBOR Notes.* Each LIBOR note will bear interest at the LIBOR base rate, adjusted by any spread or spread multiplier, as specified in the applicable supplement. The LIBOR base rate will be the London interbank offered rate for deposits in U.S. dollars or any index currency, as specified in the applicable supplement.

LIBOR for any interest determination date will be the arithmetic mean of the offered rates for deposits in the relevant index currency having the index maturity described in the applicable supplement, commencing on the related interest reset date, as the rates appear on the Reuters LIBOR screen page designated in the applicable supplement as of 11:00 A.M., London time, on that interest determination date, if at least two offered rates appear on the designated LIBOR page, except that, if the designated Reuters LIBOR screen page only provides for a single rate, that single rate will be used.

If fewer than two of the rates described above appear on that page or no rate appears on any page on which only one rate normally appears, then the calculation agent will determine LIBOR as follows:

- The calculation agent will select four major banks in the London interbank market, after consultation with us. On the interest determination date, those four banks will be requested to provide their offered quotations for deposits in the relevant index currency having an index maturity specified in the applicable supplement commencing on the interest reset date and in a representative amount to prime banks in the London interbank market at approximately 11:00 A.M., London time.
- If at least two quotations are provided, the calculation agent will determine LIBOR as the arithmetic mean of those quotations.
- If fewer than two quotations are provided, the calculation agent will select, after consultation with us, three major banks in New York City, or if the relevant index currency is not U.S. dollars, the principal financial center of the country issuing the index currency. On the interest reset date, those three banks will be requested to provide their offered quotations for loans in the relevant index currency having an index maturity specified in the applicable supplement commencing on the interest reset date to leading European banks at approximately 11:00 A.M., New York time (or the time in the relevant principal financial center). The calculation agent will determine LIBOR as the average of those quotations.
- If fewer than three New York City banks (or banks in the relevant principal financial center) selected by the calculation agent are quoting rates, LIBOR for that interest period will remain LIBOR then in effect on the interest determination date.

“Principal financial center” means, unless we specify otherwise in the applicable supplement, the capital city of the country to which the index currency relates, except for U.S. dollars,

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Australian dollars, Canadian dollars, South African rand, and Swiss francs, for which the “principal financial center” is New York, Sydney and Melbourne, Toronto, Johannesburg, and Zurich, respectively.

“Representative amount” means an amount that, in the calculation agent’s judgment, is representative of a single transaction in the relevant market at the relevant time.

“Reuters page” means the display on the Thomson Reuters service, or any successor or replacement service (“Reuters”), on the page or pages specified in this prospectus or the applicable supplement, or any successor or replacement page or pages on that service.

*EURIBOR Notes.* Each EURIBOR note will bear interest at the EURIBOR base rate, adjusted by any spread or spread multiplier, as specified in the applicable supplement.

EURIBOR, for any interest determination date, will mean the rate for deposits in euro as sponsored, calculated, and published jointly by the European Banking Federation and ACI—The Financial Markets Association, or any company established by the joint sponsors for purposes of compiling and publishing those rates, having the index maturity specified in the applicable supplement, as that rate appears on the display on Reuters on page EURIBOR01, referred to as “Reuters Page EURIBOR01,” as of 11:00 A.M., Brussels time.

The following procedures will be followed if EURIBOR cannot be determined as described above:

- If no offered rate appears on Reuters Page EURIBOR01 on an interest determination date at approximately 11:00 A.M., Brussels time, then the calculation agent, after consultation with us, will select four major banks in the Eurozone interbank market to provide a quotation of the rate at which deposits in euro having the index maturity specified in the applicable supplement are offered to prime banks in the Eurozone interbank market, and in a principal amount not less than the equivalent of €1,000,000, that is representative of a single transaction in euro in that market at that time. If at least two quotations are provided, EURIBOR will be the average of those quotations.
- If fewer than two quotations are provided, then the calculation agent, after consultation with us, will select four major banks in the Eurozone interbank market to provide a quotation of the rate offered by them, at approximately 11:00 A.M., Brussels time, on the interest determination date, for loans in euro to prime banks in the Eurozone interbank market for a period of time equivalent to the index maturity specified in the applicable supplement commencing on that interest reset date and in a principal amount not less than the equivalent of €1,000,000, that is representative of a single transaction in euro in that market at that time. If at least three quotations are provided, EURIBOR will be the average of those quotations.
- If three quotations are not provided, EURIBOR for that interest determination date will be equal to EURIBOR for the immediately preceding interest period.

“Eurozone” means the region comprised of member states of the European Union that adopted the single currency in accordance with the Treaty establishing the European Community (signed in Rome on March 25, 1957), as amended by the Treaty on European Union (signed in Maastricht on February 7, 1992) and the Treaty of Amsterdam (signed in Amsterdam on October 2, 1997).

*Treasury Rate Notes.* Each treasury rate note will bear interest at the treasury rate, adjusted by any spread or spread multiplier, as specified in the applicable supplement.

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The “treasury rate” for any interest determination date will be the rate set at the auction of direct obligations of the United States, referred to as “Treasury bills,” having the index maturity described in the applicable supplement, as specified under the caption “INVEST RATE” on Reuters page USAUCTION10 or page USAUCTION11.

The following procedures will be followed if the treasury rate cannot be determined as described above:

- If the rate is not displayed on Reuters by 3:00 P.M., New York City time, on the related calculation date, the treasury rate will be the bond equivalent yield, as defined below, of the auction rate of the applicable Treasury bills as announced by the U.S. Department of the Treasury.
- If the alternative rate described in the paragraph immediately above is not announced by the U.S. Department of the Treasury, or if the auction is not held, the treasury rate will be the bond equivalent yield of the rate on the particular interest determination date of the applicable Treasury bills as published in H.15(519) under the caption “U.S. government securities/Treasury Bills (Secondary Market).”
- If the alternative rate described in the paragraph immediately above is not announced by the U.S. Department of the Treasury, the treasury rate will be the bond equivalent yield of the rate on the particular interest determination date of the applicable Treasury bills as published in H.15 Daily Update, or another recognized electronic source used for the purpose of displaying the applicable rate, under the caption “U.S. Government Securities/Treasury Bills/Secondary Market.”
- If the alternative rate described in the paragraph immediately above is not published by 3:00 P.M., New York City time, on the related calculation date, the treasury rate will be the rate on the particular interest determination date calculated by the calculation agent as the bond equivalent yield of the arithmetic mean of the secondary market bid rates, as of approximately 3:30 P.M., New York City time, on that interest determination date, of three primary U.S. government securities dealers, selected by the calculation agent, after consultation with us, for the issue of Treasury bills with a remaining maturity closest to the particular index maturity.
- If the dealers selected by the calculation agent are not quoting as described in the paragraph immediately above, the treasury rate will be the treasury rate in effect on the particular interest determination date.

The bond equivalent yield will be calculated using the following formula:

$$\text{Bond equivalent yield} = \frac{D \times N}{360 - (D \times M)} \times 100$$

where “D” refers to the applicable annual rate for Treasury bills quoted on a bank discount basis and expressed as a decimal, “N” refers to 365 or 366, as the case may be, and “M” refers to the actual number of days in the applicable interest period.

“H.15(519)” means the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System at <http://www.federalreserve.gov/releases/h15/current/>, or any successor site or publication.

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“H.15 Daily Update” means the daily update of H.15(519), available through the website of the Board of Governors of the Federal Reserve System at [www.federalreserve.gov/releases/h15/update](http://www.federalreserve.gov/releases/h15/update), or any successor site or publication.

*Federal Funds Rate Notes.* Each federal funds rate note will bear interest at the federal funds rate, adjusted by any spread or spread multiplier, as specified in the applicable supplement.

If “Federal Funds (Effective) Rate” is specified in the applicable supplement, the federal funds rate for any interest determination date will be the rate on that date for U.S. dollar federal funds, as published in H.15(519) under the heading “Federal funds (effective)” and displayed on Reuters on page FEDFUNDS1 under the heading “EFFECT,” referred to as “Reuters Page FedFunds1.” If this rate is not published in H.15 Daily Update by 3:00 P.M., New York City time, on the related calculation date, or does not appear on Reuters Page FedFunds1, the federal funds rate will be the rate on that interest determination date as published in H.15 Daily Update, or any other recognized electronic source for the purposes of displaying the applicable rate, under the caption “Federal funds (effective).” If this alternate rate is not published in H.15 Daily Update, or other recognized electronic source for the purpose of displaying the applicable rate, by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the federal funds rate to be the average of the rates for the last transaction in overnight U.S. dollar federal funds quoted prior to 9:00 A.M., New York City time, on the business day following that interest determination date, by each of three leading brokers of U.S. dollar federal funds transactions in New York City, selected by the calculation agent, after consultation with us. If fewer than three brokers selected by the calculation agent are so quoting, the federal funds rate will be the federal funds rate in effect on that interest determination date.

If “Federal Funds Open Rate” is specified in the applicable supplement, the federal funds rate will be the rate on that interest determination date set forth under the heading “Federal Funds” opposite the caption “Open” and displayed on Reuters on page 5, referred to as “Reuters Page 5,” or if that rate does not appear on Reuters Page 5 by 3:00 P.M., New York City time, on the related calculation date, the federal funds rate will be the rate on that interest determination date displayed on FFPREBON Index page on Bloomberg L.P. (“Bloomberg”), which is the Fed Funds Opening Rate as reported by Prebon Yamane (or a successor) on Bloomberg. If the alternate rate described in the preceding sentence is not displayed on FFPREBON Index page on Bloomberg, or any other recognized electronic source for the purpose of displaying the applicable rate, by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the federal funds rate to be the average of the rates for the last transaction in overnight U.S. dollar federal funds, quoted prior to 9:00 A.M., New York City time, on that interest determination date, by each of three leading brokers of U.S. dollar federal funds transactions in New York City, selected by the calculation agent, after consultation with us. If fewer than three brokers selected by the calculation agent are quoting as described above, the federal funds rate will be the federal funds rate in effect on that interest determination date.

If “Federal Funds Target Rate” is specified in the applicable supplement, the federal funds rate will be the rate on that interest determination date for U.S. dollar federal funds displayed on the FDTR Index page on Bloomberg. If that rate does not appear on the FDTR Index page on Bloomberg by 3:00 P.M., New York City time, on the calculation date, the federal funds rate for the applicable interest determination date will be the rate for that day appearing on Reuters on page USFFTARGET=, referred to as “Reuters Page USFFTARGET=.” If that rate does not appear on the FDTR Index page on Bloomberg or is not displayed on Reuters page USFFTARGET= by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the federal funds rate to be the average of the rates for the last transaction in overnight U.S. dollar federal funds, quoted prior to 9:00 A.M., New York City time, on that interest

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determination date, by each of three leading brokers of U.S. dollar federal funds transactions in New York City, selected by the calculation agent, after consultation with us. If fewer than three brokers selected by the calculation agent are quoting as described above, the federal funds rate will be the federal funds rate in effect on that interest determination date.

*Prime Rate Notes.* Each prime rate note will bear interest at the prime rate, as adjusted by any spread or spread multiplier, as specified in the applicable supplement.

The “prime rate” for any interest determination date will be the prime rate or base lending rate on that date, as published in H.15(519) prior to 3:00 P.M., New York City time, on the related calculation date, under the heading “Bank prime loan.”

The following procedures will be followed if the prime rate cannot be determined as described above:

- If the rate is not published in H.15(519) by 3:00 P.M., New York City time, on the related calculation date, then the prime rate will be the rate as published in H.15 Daily Update, or any other recognized electronic source used for the purpose of displaying the applicable rate, under the caption “Bank prime loan.”
- If the alternative rate described above is not published in H.15 Daily Update or another recognized electronic source by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the prime rate to be the arithmetic mean of the rates of interest publicly announced by each bank that appears on Reuters page USPRIME1, as defined below, as that bank’s prime rate or base lending rate as in effect as of 11:00 A.M., New York City time, on that interest determination date.
- If fewer than four rates appear on the Reuters page USPRIME1 for that interest determination date, by 3:00 P.M., New York City time, then the calculation agent will determine the prime rate to be the average of the prime rates or base lending rates furnished in New York City by three substitute banks or trust companies (all organized under the laws of the United States or any of its states and having total equity capital of at least \$500,000,000) selected by the calculation agent, after consultation with us.
- If the banks selected by the calculation agent are not quoting as described above, the prime rate will remain the prime rate then in effect on the interest determination date.

“Reuters page USPRIME1” means the display designated as page “USPRIME1” on Reuters for the purpose of displaying prime rates or base lending rates of major U.S. banks.

## **Indexed Notes**

We may issue debt securities that provide that the rate of return, including the principal, premium (if any), interest, or other amounts payable (if any), is determined by reference, either directly or indirectly, to the price or performance of one or more securities, currencies or composite currencies, commodities, interest rates, stock indices, commodity indices or other indices, formulae, or measure, in each case as specified in the applicable supplement. We refer to these as “indexed notes.”

Holders of indexed notes may receive an amount at maturity that is greater than or less than the face amount of the notes, depending upon the formula used to determine the amount payable and the relative value at maturity of the reference asset or underlying obligation. The value of the applicable index will fluctuate over time.



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An indexed note may provide either for cash settlement or for physical settlement by delivery of the indexed note or securities, or other securities of the types listed above. An indexed note also may provide that the form of settlement may be determined at our option or the holder's option. Some indexed notes may be convertible, exercisable, or exchangeable prior to maturity, at our option or the holder's option, for the related securities.

We will specify in the applicable supplement the method for determining the principal, premium (if any), interest, or other amounts payable (if any) in respect of particular indexed notes, as well as certain historical information with respect to the specified index or indexed items, specific risk factors relating to that particular type of indexed note, and tax considerations associated with an investment in the indexed notes.

The applicable supplement for any particular indexed notes also will identify the calculation agent that will calculate the amounts payable with respect to the indexed note. The calculation agent may be one of our affiliates, including Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Commodities, Inc., or Merrill Lynch Capital Services, Inc. We may appoint different calculation agents from time to time after the original issue date of an indexed note without your consent and without notifying you of the change. Absent manifest error, all determinations of the calculation agent will be final and binding on you, the trustee and us. Upon request of the holder of an indexed note, the calculation agent will provide, if applicable, information relating to the current principal, premium (if any), rate of interest, interest payable, or other amounts payable (if any) in connection with the indexed note.

We also may offer "indexed amortizing notes," the rate of amortization and final maturity of which are subject to periodic adjustment based upon the degree to which an objective base or index rate such as LIBOR, called a "reference rate," coincides with a specified "target rate." Indexed amortizing notes may provide for adjustment of the amortization rate either on every interest payment date, or only on interest payment dates that occur after a specified "lockout date." Each indexed amortizing note will include an amortization table, specifying the rate at which the principal of the note is to be amortized following any applicable interest payment date, based upon the difference between the reference rate and the target rate. The specific terms of, and any additional considerations relating to, indexed amortizing notes will be set forth in the applicable supplement.

### **Floating-Rate/Fixed-Rate/Indexed Notes**

We may issue a debt security with elements of each of the fixed-rate, floating-rate, and indexed notes described above. For example, a debt security may bear interest at a fixed rate for some periods and at a floating rate in others. Similarly, a debt security may provide for a payment of principal at maturity linked to an index and also may bear interest at a fixed or floating rate. We will describe the determination of interest for any of these debt securities in the applicable supplement.

### **Original Issue Discount Notes**

A fixed-rate note, a floating-rate note, or an indexed note may be an original issue discount note. Original issue discount notes are debt securities that are issued at a price lower than their stated principal amount or lower than their minimum guaranteed repayment amount at maturity. Original issue discount notes may bear no interest ("zero coupon rate notes") or may bear interest at a rate that is below market rates at the time of issuance. Upon an acceleration of the maturity of an original issue discount note, the amount of interest payable will be determined in accordance with the terms of the note, as described in the applicable supplement. That amount normally is less

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than the amount payable at the maturity date. A note issued at a discount to its principal may, for U.S. federal income tax purposes, be considered an original issue discount note, regardless of the amount payable upon redemption or acceleration of maturity. See “U.S. Federal Income Tax Considerations—Taxation of Debt Securities” below for a summary of the U.S. federal income tax consequences of owning an original issue discount note.

### **Payment of Principal, Interest, and Other Amounts Due**

*Paying Agents.* We may appoint one or more financial institutions to act as our paying agents. Unless we specify otherwise in the applicable supplement, the trustee will act as our sole paying agent, security registrar, and transfer agent with respect to the debt securities through the trustee’s office. That office is currently located at 101 Barclay Street, New York, New York 10286. In addition, in the case of some of our debt securities, such as debt securities denominated in euro, that office is expected to be 48th Floor, One Canada Square, London, E14 5AL. At any time, we may rescind the designation of a paying agent, appoint a successor or an additional paying agent, or approve a change in the office through which any paying agent acts in accordance with the applicable indenture. In addition, we may decide to act as our own paying agent with respect to some or all of the debt securities, and the paying agent may resign.

*Payments to Holders and Record Dates for Interest.* We refer to each date on which interest is payable on a debt security as an “interest payment date.” Unless we specify otherwise in the applicable supplement, the provisions described in this section will apply to payments on the debt securities.

Interest payments on the debt securities will be made on each interest payment date applicable to, and at the maturity date of, the debt securities. Interest payable at any interest payment date other than the maturity date will be paid to the registered holder of the debt security on the regular record date for that interest payment date, as described below. However, unless we specify otherwise in the applicable supplement, the initial interest payment on a debt security issued between a regular record date and the interest payment date immediately following the regular record date will be made on the second interest payment date following the original issue date to the holder of record on the regular record date preceding the second interest payment date. The principal and interest payable at maturity will be paid to the holder of the debt security at the time of payment by the paying agent.

Unless we specify otherwise in the applicable supplement, the record date for any interest payment for a debt security in book-entry only form generally will be the business day prior to the payment date. If the debt security is in a form that is other than book-entry only, and unless we specify otherwise in the applicable supplement, the regular record date for an interest payment date will be the last day of the calendar month preceding the interest payment date or the fifteenth day of the calendar month in which the interest payment date occurs, as specified in the supplement, whether or not that date is a business day.

Unless we specify otherwise in the applicable supplement, if any interest payment date or the maturity date of a fixed-rate note falls on a day that is not a business day, the payment will be made on the next succeeding business day, and no additional interest will accrue in respect of the amount payable on the next business day for the period from and after the interest payment date or maturity date, as the case may be. Unless we specify otherwise in the applicable supplement, if the interest payment date for a floating-rate note falls on a day that is not a business day, the payment will be made on the next succeeding business day. However, unless we specify otherwise in the applicable supplement, for LIBOR notes or EURIBOR notes, if an interest payment date falls on a day that is not a business day, and the next business day is in the next calendar month, the interest payment date will be the immediately preceding business day. In each case, except for an

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interest payment date falling on the maturity date, the interest periods and the interest reset dates for the floating-rate note will be adjusted accordingly to calculate the amount of interest payable on that floating-rate note. Unless we specify otherwise in the applicable supplement, if the maturity date for a floating-rate note falls on a day that is not a business day, the payment will be made on the next succeeding business day, and no additional interest will accrue in respect of the amount payable on the next succeeding business day for the period from and after the maturity date.

Unless we specify otherwise in the applicable supplement, the term “business day” means, for any debt security, a day that meets all the following applicable requirements:

- for all debt securities, is any weekday that is not a legal holiday in New York, New York, Charlotte, North Carolina, or any other place of payment of the debt security, and is not a date on which banking institutions in those cities are authorized or required by law or regulation to be closed;
- for any LIBOR note, also is a day on which commercial banks are open for business (including dealings in the index currency specified in the applicable supplement) in London, England (a “London Banking Day”);
- for any debt security denominated in euro or any EURIBOR note, also is a day on which the TransEuropean Automated Real-Time Gross Settlement Express Transfer, or “TARGET,” System or any successor is operating (a “TARGET Settlement Date”); and
- for any debt security that has a specified currency other than U.S. dollars or euro, also is not a day on which banking institutions generally are authorized or obligated by law, regulation, or executive order to close in the principal financial center of the country of the specified currency.

Unless we specify otherwise in the applicable supplement, for purposes of this determination, the “principal financial center” is:

- the capital city of the country issuing the specified currency, except for U.S. dollars, Australian dollars, Canadian dollars, South African rand, and Swiss francs, for which the “principal financial center” is New York, Sydney and Melbourne, Toronto, Johannesburg, and Zurich, respectively; or
- the capital city of the country to which the index currency relates, except for U.S. dollars, Australian dollars, Canadian dollars, South African rand, and Swiss francs, for which the “principal financial center” is New York, Sydney, Toronto, Johannesburg, and Zurich, respectively.

*Payments Due in U.S. Dollars.* Unless we specify otherwise in the applicable supplement, we will follow the practices described in this subsection when we pay amounts that are due in U.S. dollars.

We will make payments on debt securities in book-entry form in accordance with arrangements then in place between the paying agent and the depository or its nominee, as holder. An indirect owner’s right to receive those payments will be governed by the rules and practices of the depository and its participants, as described below under the heading “Registration and Settlement.”

We will pay any interest on debt securities in certificated form on each interest payment date other than the maturity date by, in our discretion, wire transfer of immediately available funds or check mailed to holders of the debt securities on the applicable record date at the address

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appearing on our records. We will pay any principal, premium (if any), interest, and other amounts payable (if any) at the maturity date of a debt security in certificated form by wire transfer of immediately available funds upon surrender of the debt security at the corporate trust office of the applicable trustee or paying agent.

*Book-entry and other indirect owners should contact their banks or brokers for information on how they will receive payments on their debt securities.*

*Payments Due in Other Currencies.* Unless we specify otherwise in the applicable supplement, we will follow the practices described in this subsection when we pay amounts that are due on a debt security in a currency other than U.S. dollars. Unless we specify otherwise in the applicable supplement, holders are not entitled to receive payments in U.S. dollars of an amount due in another currency, either on a global debt security or a debt security in certificated form.

We will make payments on non-U.S. dollar-denominated debt securities in book-entry form in the applicable specified currency in accordance with arrangements then in place between the paying agent and the depository or its nominee, as holder. An indirect owner's right to receive those payments will be governed by the rules and practices of the depository and its participants, as described below under the heading "Registration and Settlement."

We will pay any interest on non-U.S. dollar-denominated debt securities in certificated form by check mailed to holders of the debt securities on the applicable record date at the address appearing on our records. We will pay any principal, premium (if any), interest, and other amounts payable (if any) at the maturity date of a non-U.S. dollar-denominated debt security in certificated form by wire transfer of immediately available funds upon surrender of the debt security at the corporate trust office of the applicable trustee or paying agent.

If we issue a debt security in a specified currency other than U.S. dollars, unless we specify otherwise in the applicable supplement, we will appoint a financial institution to act as the exchange rate agent. The exchange rate agent will determine the applicable rate of exchange that would apply to a payment made in U.S. dollars, if the currency in which we otherwise would be required to make the applicable payment is not available. The exchange rate agent may be one of our affiliates. We will identify in the applicable supplement the exchange rate agent that we have appointed for a particular debt security as of its original issue date. We may appoint different exchange rate agents from time to time after the original issue date of the debt security without your consent and without notifying you of the change. All determinations made by the exchange rate agent will be in its sole discretion unless we state in the applicable supplement that any determination requires our approval. Absent manifest error, those determinations will be final and binding on you and us.

*Book-entry and other indirect owners of a debt security with a specified currency other than U.S. dollars should contact their banks or brokers for information about how to receive payments in the specified currency or in U.S. dollars.*

### **No Sinking Fund**

Unless we specify otherwise in the applicable supplement, our debt securities will not be entitled to the benefit of any sinking fund. This means that we will not deposit money on a regular basis into any separate custodial account to repay the debt securities.

### **Redemption**

The applicable supplement will indicate whether we may redeem the debt securities prior to their maturity date. If we may redeem the debt securities prior to maturity, the applicable

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supplement will indicate the redemption price, the method for redemption, and the date or dates upon which we may redeem the debt securities. Unless we specify otherwise in the applicable supplement, we may redeem debt securities only on an interest payment date, and the redemption price will be 100% of the principal amount of the debt securities to be redeemed, plus any accrued and unpaid interest.

Unless we specify otherwise in the applicable supplement, we may exercise our right to redeem debt securities by giving notice to the trustee under the applicable indenture at least 10 business days but not more than 60 calendar days before the specified redemption date. The notice will take the form of a certificate signed by us specifying:

- the date fixed for redemption;
- the redemption price;
- the CUSIP number of the debt securities to be redeemed;
- the amount to be redeemed, if less than all of a series of debt securities is to be redeemed;
- the place of payment for the debt securities to be redeemed; and
- that on and after the date fixed for redemption, interest will cease to accrue on the debt securities to be redeemed.

So long as a depository is the record holder of the applicable debt securities to be redeemed, we will deliver any notice of our election to exercise our redemption right only to that depository.

### **Repayment**

The applicable supplement will indicate whether the debt securities can be repaid at the holder's option prior to their maturity date. If the debt securities may be repaid prior to maturity, the applicable supplement will indicate the applicable repayment price or prices, the procedures for repayment and the date or dates on or after which the holder can request repayment.

### **Repurchase**

We may purchase at any time and from time to time, including through a subsidiary or affiliate of ours, outstanding debt securities by tender, in the open market, or by private agreement. We, or our affiliates, have the discretion to hold or resell any repurchased debt securities. We also have the discretion to cancel any repurchased debt securities.

### **Conversion**

We may issue debt securities that are convertible into, or exercisable or exchangeable for, at either our option or the holder's option or otherwise as provided in the applicable supplement, our preferred stock, depository shares, common stock, or other debt securities, or debt or equity securities of one or more third parties. The applicable supplement will describe the terms of any conversion, exercise, or exchange features, including:

- the periods during which conversion, exercise, or exchange, as applicable, may be elected;
- the conversion, exercise, or exchange price payable and the number of shares or amount of our preferred stock, depository shares, common stock, or other debt securities, or debt or

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equity securities of a third party, that may be issued upon conversion, exercise, or exchange, and any adjustment provisions; and

- the procedures for electing conversion, exercise, or exchange, as applicable.

### **Exchange, Registration, and Transfer**

Subject to the terms of the applicable indenture, debt securities of any series in certificated form may be exchanged at the option of the holder for other debt securities of the same series and of an equal aggregate principal amount and type in any authorized denominations.

Debt securities in certificated form may be presented for registration of transfer at the office of the security registrar or at the office of any transfer agent that we designate and maintain. The security registrar or the transfer agent will make the transfer or registration only if it is satisfied with the documents of title and identity of the person making the request. There will not be a service charge for any exchange or registration of transfer of debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the exchange. Unless we specify otherwise in the applicable supplement, The Bank of New York Mellon Trust Company, N.A. will be the authenticating agent, registrar, and transfer agent for the debt securities issued under the respective indentures. We may change the security registrar or the transfer agent or approve a change in the location through which any security registrar or transfer agent acts at any time, except that we will be required to maintain a security registrar and transfer agent in each place of payment for each series of debt securities. At any time, we may designate additional transfer agents for any series of debt securities.

We will not be required to (1) issue, exchange, or register the transfer of any debt security of any series to be redeemed for a period of 15 days before those debt securities were selected for redemption, or (2) exchange or register the transfer of any debt security that was selected, called, or is being called for redemption, except the unredeemed portion of any debt security being redeemed in part.

For a discussion of restrictions on the exchange, registration, and transfer of book-entry securities, see “Registration and Settlement” below.

### **Subordination**

Our subordinated debt securities are subordinated and junior in right of payment to all of our “senior indebtedness.” The Subordinated Indenture defines “senior indebtedness” as any indebtedness for money borrowed, including all of our indebtedness for borrowed and purchased money, all of our obligations arising from off-balance sheet guarantees and direct credit substitutes, and our obligations associated with derivative products such as interest and foreign exchange rate contracts and commodity contracts, that was outstanding on the date we executed the Subordinated Indenture, or was created, incurred, or assumed after that date, for which we are responsible or liable as obligor, guarantor, or otherwise, and all deferrals, renewals, extensions, and refundings of that indebtedness or obligations, other than the debt securities issued under the Subordinated Indenture or any other indebtedness that by its terms is subordinate in right of payment to any of our other indebtedness. Each supplement for a series of subordinated debt securities will indicate the aggregate amount of our senior indebtedness outstanding, as of the most recent practicable date, and any limitation on the issuance of additional senior indebtedness. As of September 30, 2014, on a non-consolidated basis, we had approximately \$154 billion of senior long-term debt and certain short-term borrowings. Senior indebtedness also includes our obligations under letters of credit, guarantees, foreign exchange contracts and interest rate swap contracts,

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none of which are included in such amount. In addition, holders of subordinated debt securities may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding.

If there is a default or event of default under any senior indebtedness that would allow acceleration of maturity of the senior indebtedness and that default or event of default is not remedied, and we and the trustee of the Subordinated Indenture receive notice of this default from the holders of at least 10% in principal amount of any kind or category of any senior indebtedness or if the trustee of the Subordinated Indenture receives notice from us, then we will not be able to make any principal, premium, interest, or other payments on the subordinated debt securities or repurchase our subordinated debt securities.

If any subordinated debt security is declared due and payable before the required date or upon a payment or distribution of our assets to creditors pursuant to a dissolution, winding up, liquidation, or reorganization, we are required to pay all principal, premium, interest, or other payments to holders of senior indebtedness before any holders of subordinated debt are paid. In addition, if any amounts previously were paid to the holders of subordinated debt or the trustee of the Subordinated Indenture, the holders of senior indebtedness will have first rights to the amounts previously paid.

Subject to the payment in full of all our senior indebtedness, the holders of our subordinated debt securities will be subrogated to the rights of the holders of our senior indebtedness to receive payments or distributions of our assets applicable to the senior indebtedness until our subordinated debt securities are paid in full. For purposes of this subrogation, the subordinated debt securities will be subrogated equally and ratably with all our other indebtedness that by its terms ranks equally with our subordinated debt securities and is entitled to like rights of subrogation.

### **Sale or Issuance of Capital Stock of Banks**

The Senior Indenture prohibits the issuance, sale, or other disposition of capital stock, or securities convertible into or options, warrants, or rights to acquire capital stock, of any Principal Subsidiary Bank (as defined below) or of any subsidiary which owns shares of capital stock, or securities convertible into or options, warrants, or rights to acquire capital stock, of any Principal Subsidiary Bank, with the following exceptions:

- sales of directors' qualifying shares;
- sales or other dispositions for fair market value, if, after giving effect to the disposition and to conversion of any shares or securities convertible into capital stock of a Principal Subsidiary Bank, we would own at least 80% of each class of the capital stock of that Principal Subsidiary Bank;
- sales or other dispositions made in compliance with an order of a court or regulatory authority of competent jurisdiction;
- any sale by a Principal Subsidiary Bank of additional shares of its capital stock, securities convertible into shares of its capital stock, or options, warrants, or rights to subscribe for or purchase shares of its capital stock, to its stockholders at any price, so long as before that sale we owned, directly or indirectly, securities of the same class and immediately after the sale, we owned, directly or indirectly, at least as great a percentage of each class of securities of the Principal Subsidiary Bank as we owned before the sale of additional securities; and

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- any issuance of shares of capital stock, or securities convertible into or options, warrants, or rights to subscribe for or purchase shares of capital stock, of a Principal Subsidiary Bank or any subsidiary which owns shares of capital stock, or securities convertible into or options, warrants, or rights to acquire capital stock, of any Principal Subsidiary Bank, to us or our wholly owned subsidiary.

A “Principal Subsidiary Bank” is defined in the Senior Indenture as any bank with total assets equal to more than 10% of our total consolidated assets. As of the date of this prospectus, Bank of America, N.A. is our only Principal Subsidiary Bank.

### **Limitation on Mergers and Sales of Assets**

Each indenture generally permits a consolidation or merger between us and another entity. It also permits the sale or transfer by us of all or substantially all of our assets. These transactions are permitted if:

- the resulting or acquiring entity, if other than us, is organized and existing under the laws of the United States or any state or the District of Columbia and expressly assumes all of our obligations under that indenture; and
- immediately after the transaction, we (or any successor company) are not in default in the performance of any covenant or condition under that indenture.

Upon any consolidation, merger, sale, or transfer of this kind, the resulting or acquiring entity will be substituted for us in the applicable indenture with the same effect as if it had been an original party to that indenture. As a result, the successor entity may exercise our rights and powers under the indenture.

### **Waiver of Covenants**

The holders of a majority in principal amount of the debt securities of all affected series then outstanding under the indenture may waive compliance with some of the covenants or conditions of that indenture.

### **Modification of the Indentures**

We and the trustee may modify the applicable indenture and the rights of the holders of the debt securities with the consent of the holders of at least 66 2/3% of the aggregate principal amount of all series of debt securities under that indenture affected by the modification. However, no modification may extend the fixed maturity of, reduce the principal amount or redemption premium of, or reduce the rate of, or extend the time of payment of, interest on, any debt security without the consent of each holder affected by the modification. No modification may reduce the percentage of debt securities that is required to consent to modification of an indenture without the consent of all holders of the debt securities outstanding under that indenture.

In addition, we and the trustee may execute supplemental indentures in some circumstances without the consent of any holders of outstanding debt securities.

For purposes of determining the aggregate principal amount of the debt securities outstanding at any time in connection with any request, demand, authorization, direction, notice, consent, or waiver under the applicable indenture, (1) the principal amount of any debt security issued with



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original issue discount is that amount that would be due and payable at that time upon an event of default, and (2) the principal amount of a debt security denominated in a foreign currency or currency unit is the U.S. dollar equivalent on the date of original issuance of the debt security.

### **Meetings and Action by Securityholders**

The trustee may call a meeting in its discretion, or upon request by us or the holders of at least 10% in principal amount of a series of outstanding debt securities, by giving notice. If a meeting of holders is duly held, any resolution raised or decision taken in accordance with the indenture will be binding on all holders of debt securities of that series.

### **Events of Default and Rights of Acceleration**

The Senior Indenture defines an event of default for a series of senior debt securities as any one of the following events:

- our failure to pay principal or any premium when due on any securities of that series;
- our failure to pay interest on any securities of that series, within 30 calendar days after the interest becomes due;
- our breach of any of our other covenants contained in the senior debt securities of that series or in the Senior Indenture, that is not cured within 90 calendar days after written notice to us by the trustee of the Senior Indenture, or to us and the trustee of the Senior Indenture by the holders of at least 25% in principal amount of all senior debt securities then outstanding under the Senior Indenture and affected by the breach; and
- specified events involving our bankruptcy, insolvency, or liquidation.

The Subordinated Indenture defines an event of default only as our voluntary or involuntary bankruptcy under U.S. federal bankruptcy laws (and, in the case of our involuntary bankruptcy, continuing for a period of 60 days).

If an event of default occurs and is continuing, either the trustee or the holders of 25% in principal amount of the debt securities outstanding under the applicable indenture (or, in the case of an event of default under the Senior Indenture with respect to a series of senior debt securities, the holders of 25% in principal amount of the outstanding debt securities of all series affected) may declare the principal amount, or, if the debt securities are issued with original issue discount, a specified portion of the principal amount, of all debt securities (or the debt securities of all series affected, as the case may be) to be due and payable immediately. The holders of a majority in principal amount of the debt securities then outstanding (or of the series affected, as the case may be), in some circumstances, may annul the declaration of acceleration and waive past defaults.

Payment of principal of the subordinated debt securities may not be accelerated in the case of a default in the payment of principal, any premium, interest, or any other amounts or the performance of any of our other covenants.

### **Collection of Indebtedness**

If we fail to pay the principal of (or, under the Senior Indenture, any premium on) any debt securities, or if we are over 30 calendar days late on an interest payment on the debt securities, the

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applicable trustee can demand that we pay to it, for the benefit of the holders of those debt securities, the amount which is due and payable on those debt securities, including any interest incurred because of our failure to make that payment. If we fail to pay the required amount on demand, the trustee may take appropriate action, including instituting judicial proceedings against us.

In addition, a holder of a debt security also may file suit to enforce our obligation to make payment of principal, any premium, interest, or other amounts due on that debt security regardless of the actions taken by the trustee.

The holders of a majority in principal amount of each series of the debt securities then outstanding under an indenture may direct the time, method, and place of conducting any proceeding for any remedy available to the trustee under that indenture, but the trustee will be entitled to receive from the holders a reasonable indemnity against expenses and liabilities.

We are required periodically to file with the trustees a certificate stating that we are not in default under any of the terms of the indentures.

### **Payment of Additional Amounts**

If we so specify in the applicable supplement, and subject to the exceptions and limitations set forth below, we will pay to the beneficial owner of any debt security that is a “non-U.S. person” additional amounts to ensure that every net payment on that debt security will not be less, due to the payment of U.S. withholding tax, than the amount then otherwise due and payable. For this purpose, a “net payment” on a debt security means a payment by us or any paying agent, including payment of principal and interest, after deduction for any present or future tax, assessment, or other governmental charge of the United States (other than a territory or possession). These additional amounts will constitute additional interest on the debt security. For this purpose, U.S. withholding tax means a withholding tax of the United States, other than a territory or possession.

However, notwithstanding our obligation, if so specified, to pay additional amounts, we will not be required to pay additional amounts in any of the circumstances described in items (1) through (15) below, unless we specify otherwise in the applicable supplement.

- (1) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld solely by reason of the beneficial owner of the debt security:
  - having a relationship with the United States as a citizen, resident, or otherwise;
  - having had such a relationship in the past; or
  - being considered as having had such a relationship.
- (2) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld solely by reason of the beneficial owner of the debt security:
  - being treated as present in or engaged in a trade or business in the United States;
  - being treated as having been present in or engaged in a trade or business in the United States in the past;

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- having or having had a permanent establishment in the United States; or
  - having or having had a qualified business unit which has the U.S. dollar as its functional currency.
- (3) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld solely by reason of the beneficial owner of the debt security being or having been a:
- personal holding company;
  - foreign personal holding company;
  - private foundation or other tax-exempt organization;
  - passive foreign investment company;
  - controlled foreign corporation; or
  - corporation which has accumulated earnings to avoid U.S. federal income tax.
- (4) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld solely by reason of the beneficial owner of the debt security owning or having owned, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote.
- (5) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld solely by reason of the beneficial owner of the debt security being a bank extending credit under a loan agreement entered into in the ordinary course of business.

For purposes of items (1) through (5) above, “beneficial owner” includes, without limitation, a holder and a fiduciary, settlor, partner, member, shareholder, or beneficiary of the holder if the holder is an estate, trust, partnership, limited liability company, corporation, or other entity, or a person holding a power over an estate or trust administered by a fiduciary holder.

- (6) Additional amounts will not be payable to any beneficial owner of a debt security that is:
- A fiduciary;
  - A partnership;
  - A limited liability company;
  - Another fiscally transparent entity; or
  - Not the sole beneficial owner of the debt security, or any portion of the debt security.

However, this exception to the obligation to pay additional amounts will apply only to the extent that a beneficiary or settlor in relation to the fiduciary, or a beneficial owner, partner, or member of the partnership, limited liability company, or other fiscally transparent entity,

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would not have been entitled to the payment of an additional amount had the beneficiary, settlor, beneficial owner, partner, or member received directly its beneficial or distributive share of the payment.

- (7) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld solely by reason of the failure of the beneficial owner of the debt security or any other person to comply with applicable certification, identification, documentation, or other information reporting requirements. This exception to the obligation to pay additional amounts will apply only if compliance with such requirements is required as a precondition to exemption from such tax, assessment, or other governmental charge by statute or regulation of the United States or by an applicable income tax treaty to which the United States is a party.
- (8) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is collected or imposed by any method other than by withholding from a payment on a debt security by us or any paying agent.
- (9) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld by reason of a change in law, regulation, or administrative or judicial interpretation that becomes effective more than 15 days after the payment becomes due or is duly provided for, whichever occurs later.
- (10) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld by reason of the presentation by the beneficial owner of a debt security for payment more than 30 days after the date on which such payment becomes due or is duly provided for, whichever occurs later.
- (11) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any:
  - estate tax;
  - inheritance tax;
  - gift tax;
  - sales tax;
  - excise tax;
  - transfer tax;
  - wealth tax;
  - personal property tax; or
  - any similar tax, assessment, or other governmental charge.
- (12) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge required to be withheld by

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any paying agent from a payment of principal or interest on the applicable security if such payment can be made without such withholding by any other paying agent.

- (13) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld by reason of the application of Section 1471 through Section 1474 of the U.S. Internal Revenue Code of 1986, as amended, (or any successor provision), any regulation, pronouncement, or agreement thereunder, official interpretations thereof, or any law implementing an intergovernmental approach thereto, whether currently in effect or as published and amended from time to time.
- (14) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any tax, assessment, or other governmental charge that is imposed or withheld by reason of the payment being treated as a dividend or dividend equivalent for U.S. tax purposes.
- (15) Additional amounts will not be payable if a payment on a debt security is reduced as a result of any combination of items (1) through (14) above.

Except as specifically provided in this section, we will not be required to make any payment of any tax, assessment, or other governmental charge imposed by any government, political subdivision, or taxing authority of that government.

For purposes of determining whether the payment of additional amounts is required, the term “U.S. person” means any individual who is a citizen or resident of the United States; any corporation, partnership, or other entity created or organized in or under the laws of the United States; any estate if the income of such estate falls within the federal income tax jurisdiction of the United States regardless of the source of that income; and any trust if a U.S. court is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of the substantial decisions of the trust. Additionally, for this purpose, “non-U.S. person” means a person who is not a U.S. person, and “United States” means the United States of America, including each state of the United States and the District of Columbia, its territories, its possessions, and other areas within its jurisdiction.

### **Redemption for Tax Reasons**

If we so specify in the applicable supplement, we may redeem the debt securities in whole, but not in part, at any time before maturity, after giving not less than 30 nor more than 60 calendar days’ notice to the trustee under the applicable indenture and to the holders of the debt securities, if we have or will become obligated to pay additional amounts, as described above under “—Payment of Additional Amounts,” as a result of any change in, or amendment to, the laws or regulations of the United States or any political subdivision or any authority of the United States having power to tax, or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the date of the applicable supplement for the issuance of those debt securities.

In connection with any notice of redemption for tax reasons, we will deliver to the trustee under the indenture any required certificate, request, or order.

Unless we specify otherwise in the applicable supplement, any debt securities redeemed for tax reasons will be redeemed at 100% of their principal amount together with interest accrued up to, but excluding, the redemption date.

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### **Defeasance and Covenant Defeasance**

If we so specify in the applicable supplement, the provisions for full defeasance and covenant defeasance described below will apply to the debt securities if certain conditions are satisfied.

*Full Defeasance.* If there is a change in the U.S. federal tax law, as described below, we can legally release ourselves from all payment and other obligations on any debt securities. This is called full defeasance. For us to do so, each of the following must occur:

- We must deposit in trust for the benefit of the holders of those debt securities a combination of money and U.S. government or U.S. government agency notes or bonds that will generate enough cash to make interest, principal, and any other payments on those debt securities at their due dates;
- There must be a change in current U.S. federal tax law or an Internal Revenue Service ruling that lets us make the above deposit without causing the holders to be taxed on the debt securities any differently than if we did not make the deposit and repaid the debt securities ourselves. Under current U.S. federal tax law, the deposit, and our legal release from your debt security, would be treated as though we took back your debt security and gave you your share of the cash and notes or bonds deposited in trust. In that event, you could recognize gain or loss on your debt security; and
- We must deliver to the trustee under the indenture a legal opinion of our counsel confirming the tax law treatment described above.

If we ever fully defeased your debt security, you would have to rely solely on the trust deposit for payments on your debt security. You would not be able to look to us for payment in the event of any shortfall.

*Covenant Defeasance.* Under current U.S. federal tax law, we can make the same type of deposit described above and be released from any restrictive covenants relating to your debt security. This is called covenant defeasance. In that event, you would lose the protection of those restrictive covenants. In order to achieve covenant defeasance for the debt securities, we must do both of the following:

- We must deposit in trust for the benefit of the holders of those debt securities a combination of money and U.S. government or U.S. government agency notes or bonds that will generate enough cash to make interest, principal, and any other payments on those debt securities on their due dates; and
- We must deliver to the trustee under the indenture a legal opinion of our counsel confirming that under current U.S. federal income tax law we may make the above deposit without causing the holders to be taxed on the debt securities any differently than if we did not make the deposit and repaid the debt securities ourselves.

If we achieve covenant defeasance with respect to your debt security, you can still look to us for repayment of your debt security in the event of any shortfall in the trust deposit. You should note, however, that if one of the remaining events of default occurred, such as our bankruptcy, and your debt security became immediately due and payable, there may be a shortfall. Depending on the event causing the default, you may not be able to obtain payment of the shortfall.

### **Notices**

We or the trustee on our behalf, if so requested, will provide the holders with any required notices by first-class mail to the addresses of the holders as they appear in the security register. So

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long as a depository is the record holder of a series of debt securities with respect to which a notice is given, we or the trustee, if so requested, will deliver the notice only to that depository.

### **Concerning the Trustees**

We and certain of our affiliates have from time to time maintained deposit accounts and conducted other banking transactions with The Bank of New York Mellon Trust Company, N.A. and its affiliates in the ordinary course of business. We expect to continue these business transactions. The Bank of New York Mellon Trust Company, N.A. and its affiliates also serve as trustee for a number of series of outstanding indebtedness of us and our affiliates under other indentures.

### **Governing Law**

The indentures and the debt securities will be governed by New York law.

## **DESCRIPTION OF WARRANTS**

### **General**

We may issue warrants, including debt warrants and universal warrants. We may offer warrants separately or as part of a unit, as described below under the heading “Description of Units.”

We may issue warrants in any amounts or in as many distinct series as we determine. We will issue each series of debt warrants and universal warrants under a separate warrant agreement to be entered into between us and a warrant agent to be designated in the applicable supplement. When we refer to a series of warrants, we mean all warrants issued as part of the same series under the applicable warrant agreement.

This section describes some of the general terms and provisions of warrants. We will describe the specific terms of a series of warrants and the applicable warrant agreement in the applicable supplement. The following description and any description of the warrants in the applicable supplement may not be complete and is subject to and qualified in its entirety by reference to the terms and provisions of the applicable warrant agreement. A form of the warrant agreement reflecting the particular terms and provisions of a series of offered warrants will be filed with the SEC in connection with the offering and incorporated by reference in the registration statement and this prospectus. See “Where You Can Find More Information” below for information on how to obtain copies of any warrant agreements.

### **Description of Debt Warrants**

We may issue warrants for the purchase of our debt securities. We refer to this type of warrant as a “debt warrant.” If debt warrants are offered, the supplement will describe the terms of the debt warrants and the warrant agreement relating to the debt warrants, including the following:

- the offering price;
- the designation, aggregate stated principal amount, and terms of the debt securities purchasable upon exercise of the debt warrants;

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- the currency, currency unit, or composite currency in which the price for the debt warrants is payable;
- if applicable, the designation and terms of the debt securities with which the debt warrants are issued, and the number of debt warrants issued with each security;
- if applicable, the date on and after which the debt warrants and the related debt securities will be separately transferable;
- the principal amount of debt securities purchasable upon exercise of a debt warrant and the price at which, and the currency, currency units, or composite currency based on or relating to currencies in which, the principal amount of debt securities may be purchased upon exercise;
- the dates the right to exercise the debt warrants will commence and expire and, if the debt warrants are not continuously exercisable, any dates on which the debt warrants are not exercisable;
- any circumstances that will cause the debt warrants to be deemed to be automatically exercised;
- if applicable, a discussion of the U.S. federal income tax consequences;
- whether the debt warrants or related securities will be listed on any securities exchange;
- whether the debt warrants will be issued in global or certificated form;
- the name of the warrant agent;
- a description of the terms of any warrant agreement to be entered into between us and a bank or trust company, as warrant agent, governing the debt warrants; and
- any other terms of the debt warrants which are permitted under the warrant agreement.

### **Description of Universal Warrants**

We may also issue warrants for the purchase or sale of, or whose cash value is determined by reference to the performance, level, or value of, one or more of the following:

- securities of one or more issuers, including our common or preferred stock or other securities described in this prospectus, or the debt or equity securities of third parties;
- one or more currencies, currency units, or composite currencies;
- one or more commodities;
- any other financial, economic, or other measure or instrument, including the occurrence or non-occurrence of any event or circumstance; and
- one or more indices or baskets of the items described above.

We refer to each type of property described above as “warrant property.” We refer to this type of warrant as a “universal warrant.”



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We may satisfy our obligations, if any, and the holder of a universal warrant may satisfy its obligations, if any, with respect to any universal warrants by delivering the assets described in the applicable supplement, and in some cases, cash.

If universal warrants are offered, the applicable supplement will describe the terms of the universal warrants and the warrant agreement, including the following:

- the offering price;
- the title and aggregate number of the universal warrants;
- the nature and amount of the warrant property that the universal warrants represent the right to buy or sell;
- whether the universal warrants are put warrants or call warrants, including in either case, the method by which the warrants may be settled;
- the price at which the warrant property may be purchased or sold, the currency, and the procedures and conditions relating to exercise;
- the method of exercising the universal warrants, the method of paying the exercise price, and the method of settling the warrant;
- the dates on which the right to exercise the universal warrants will commence and expire;
- if applicable, a discussion of the U.S. federal income tax consequences;
- whether the universal warrants or underlying securities will be listed on any securities exchange;
- whether the universal warrants will be issued in global or certificated form;
- the name of the warrant agent;
- a description of the terms of any warrant agreement to be entered into between us and a bank or trust company, as warrant agent, governing the universal warrants; and
- any other terms of the universal warrants which are permitted under the warrant agreement.

### **Modification**

We and the warrant agent may amend the terms of any warrant agreement and the warrants without the consent of the holders of the warrants to cure any ambiguity, to correct any inconsistent provision, or in any other manner we deem necessary or desirable and which will not affect adversely the interests of the holders. In addition, we may amend the warrant agreement and the terms of the warrants with the consent of the holders of a majority of the outstanding unexercised warrants affected. However, any modification to the warrants cannot change the exercise price, reduce the amounts receivable upon exercise, cancellation, or expiration, shorten the time period during which the warrants may be exercised, or otherwise materially and adversely affect the rights of the holders of the warrants or reduce the percentage of outstanding warrants required to modify or amend the warrant agreement or the terms of the warrants, without the consent of the affected holders.

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### **Enforceability of Rights of Warrantheolders; No Trust Indenture Act Protection**

The warrant agent will act solely as our agent and will not assume any obligation or relationship of agency or trust with the holders of the warrants. Any record holder or beneficial owner of a warrant, without anyone else's consent, may enforce by appropriate legal action, on his or her own behalf, his or her right to exercise the warrant in accordance with its terms. A holder of a warrant will not be entitled to any of the rights of a holder of the debt securities or other securities or warrant property purchasable upon the exercise of the warrant, including any right to receive payments on those securities or warrant property or to enforce any covenants or rights in the relevant indenture or any other agreement, before exercising the warrant.

No warrant agreement will be qualified as an indenture, and no warrant agent under any warrant agreement will be required to qualify as a trustee, under the Trust Indenture Act of 1939. Therefore, holders of warrants issued under a warrant agreement will not have the protection of the Trust Indenture Act of 1939 with respect to their warrants.

## **DESCRIPTION OF PURCHASE CONTRACTS**

### **General**

We may issue purchase contracts in any amounts and in as many distinct series as we determine. We may offer purchase contracts separately or as part of a unit, as described below under the heading "Description of Units." When we refer to a series of purchase contracts, we mean all purchase contracts issued as part of the same series under the applicable purchase contract.

This section describes some of the general terms and provisions applicable to all purchase contracts. We will describe the specific terms of a series of purchase contracts in the applicable supplement. The following description and any description of the purchase contracts in the applicable supplement may not be complete and is subject to and qualified in its entirety by reference to the terms and provisions of the applicable purchase contract. A form of the purchase contract reflecting the particular terms and provisions of a series of offered purchase contracts will be filed with the SEC in connection with the offering and incorporated by reference in the registration statement and this prospectus. See "Where You Can Find More Information" below for information on how to obtain copies of any purchase contracts.

### **Purchase Contract Property**

We may issue purchase contracts for the purchase or sale of, or whose cash value is determined by reference or linked to the performance, level, or value of, one or more of the following:

- securities of one or more issuers, including our common or preferred stock, other securities described in this prospectus, or the debt or equity securities of third parties;
- one or more currencies, currency units, or composite currencies;
- one or more commodities;
- any other financial, economic, or other measure or instrument, including the occurrence or non-occurrence of any event or circumstance; and
- one or more indices or baskets of the items described above.

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We refer to each type of property described above as a “purchase contract property.”

Each purchase contract will obligate:

- the holder to purchase or sell, and us to sell or purchase, on specified dates, one or more purchase contract properties at a specified price or prices; or
- the holder or us to settle the purchase contract with a cash payment determined by reference to the value, performance, or level of one or more purchase contract properties, on specified dates and at a specified price or prices.

No holder of a purchase contract will, as such, have any rights of a holder of the purchase contract property purchasable under or referenced in the contract, including any rights to receive payments on that property.

### **Information in Supplement**

If we offer purchase contracts, the applicable supplement will describe the terms of the purchase contracts, including the following:

- the purchase date or dates;
- if other than U.S. dollars, the currency or currency unit in which payment will be made;
- the specific designation and aggregate number of, and the price at which we will issue, the purchase contracts;
- whether the purchase contract obligates the holder to purchase or sell, or both purchase and sell, one or more purchase contract properties, and the nature and amount of each of those properties, or the method of determining those amounts;
- the purchase contract property or cash value, and the amount or method for determining the amount of purchase contract property or cash value, deliverable under each purchase contract;
- whether the purchase contract is to be prepaid or not and the governing document for the contract;
- the price at which the purchase contract is settled, and whether the purchase contract is to be settled by delivery of, or by reference or linkage to the value, performance, or level of, the purchase contract properties;
- any acceleration, cancellation, termination, or other provisions relating to the settlement of the purchase contract;
- if the purchase contract property is an index, the method of providing for a substitute index or indices or otherwise determining the amount payable;
- if the purchase contract property is an index or a basket of securities, a description of the index or basket of securities;
- whether, following the occurrence of a market disruption event or force majeure event (as defined in the applicable supplement), the settlement delivery obligation or cash settlement value of a purchase contract will be determined on a different basis than under normal circumstances;

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- whether the purchase contract will be issued as part of a unit and, if so, the other securities comprising the unit and whether any unit securities will be subject to a security interest in our favor as described below;
- if applicable, a discussion of the U.S. federal income tax consequences;
- the identities of any depositories and any paying, transfer, calculation, or other agents for the purchase contracts;
- whether the purchase contract will be issued in global or certificated form;
- any securities exchange or quotation system on which the purchase contracts or any securities deliverable in settlement of the purchase contracts may be listed; and
- any other terms of the purchase contracts and any terms required by or advisable under applicable laws and regulations.

### **Prepaid Purchase Contracts; Applicability of Indenture**

Purchase contracts may require holders to satisfy their obligations under the purchase contracts at the time they are issued. We refer to these contracts as “prepaid purchase contracts.”

In certain circumstances, our obligation to settle a prepaid purchase contract on the relevant settlement date may constitute our senior debt securities or our subordinated debt securities. Accordingly, prepaid purchase contracts may be issued under the Senior Indenture or the Subordinated Indenture, which are described above under the heading “Description of Debt Securities.”

### **Non-Prepaid Purchase Contracts; No Trust Indenture Act Protection**

Some purchase contracts do not require holders to satisfy their obligations under the purchase contracts until settlement. We refer to these contracts as “non-prepaid purchase contracts.” The holder of a non-prepaid purchase contract may remain obligated to perform under the contract for a substantial period of time.

Non-prepaid purchase contracts will be issued under a unit agreement, if they are issued in units, or under some other document, if they are not. We describe unit agreements generally under the heading “Description of Units” below. We will describe the particular governing document that applies to your non-prepaid purchase contracts in the applicable supplement.

Non-prepaid purchase contracts will not be our senior debt securities or subordinated debt securities and will not be issued under one of our indentures, unless we specify otherwise in the applicable supplement. Consequently, no governing documents for non-prepaid purchase contracts will be qualified as indentures, and no third party will be required to qualify as a trustee with regard to those contracts, under the Trust Indenture Act of 1939. Therefore, holders of non-prepaid purchase contracts will not have the protection of the Trust Indenture Act of 1939.

### **Pledge by Holders to Secure Performance**

If we so specify in the applicable supplement, the holder’s obligations under the purchase contract and governing document will be secured by collateral. In that case, the holder, acting

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through the unit agent as its attorney-in-fact, if applicable, will pledge the items described below to a collateral agent that we will identify in the applicable supplement, which will hold them, for our benefit, as collateral to secure the holder's obligations. We refer to this as the "pledge" and all the items described below as the "pledged items." Unless we specify otherwise in the applicable supplement, the pledge will create a security interest in the holder's entire interest in and to:

- any other securities included in the unit, if the purchase contract is part of a unit, and/or any other property specified in the applicable supplement;
- all additions to and substitutions for the pledged items;
- all income, proceeds, and collections received in respect of the pledged items; and
- all powers and rights owned or acquired later with respect to the pledged items.

The collateral agent will forward all payments and proceeds from the pledged items to us, unless the payments and proceeds have been released from the pledge in accordance with the purchase contract and the governing document. We will use the payments and proceeds from the pledged items to satisfy the holder's obligations under the purchase contract.

### **Settlement of Purchase Contracts that Are Part of Units**

Unless we specify otherwise in the applicable supplement, where purchase contracts issued together with debt securities as part of a unit require the holders to buy purchase contract property, the unit agent may apply principal payments from the debt securities in satisfaction of the holders' obligations under the related purchase contract as specified in the applicable supplement. The unit agent will not so apply the principal payments if the holder has delivered cash to meet its obligations under the purchase contract. If the holder is permitted to settle its obligations by cash payment, the holder may be permitted to do so by delivering the debt securities in the unit to the unit agent as provided in the governing document. If the holder settles its obligations in cash rather than by delivering the debt security that is part of the unit, that debt security will remain outstanding, if the maturity extends beyond the relevant settlement date and, as more fully described in the applicable supplement, the holder will receive that debt security or an interest in the relevant global debt security.

*Book-entry and other indirect owners should consult their banks or brokers for information on how to settle their purchase contracts.*

### **Failure of Holder to Perform Obligations**

If the holder fails to settle its obligations under a non-prepaid purchase contract as required, the holder will not receive the purchase contract property or other consideration to be delivered at settlement. Holders that fail to make timely settlement also may be obligated to pay interest or other amounts.

## DESCRIPTION OF UNITS

### General

We may issue units from time to time in such amounts and in as many distinct series as we determine.

We will issue each series of units under a unit agreement to be entered into between us and a unit agent to be designated in the applicable supplement. When we refer to a series of units, we mean all units issued as part of the same series under the applicable unit agreement.

This section describes some of the general terms and provisions applicable to all the units. We will describe the specific terms of a series of units and the applicable unit agreement in the applicable supplement. The following description and any description of the units in the applicable supplement may not be complete and is subject to and qualified in its entirety by reference to the terms and provisions of the applicable unit agreement. A form of the unit agreement reflecting the particular terms and provisions of a series of offered units will be filed with the SEC in connection with the offering and incorporated by reference in the registration statement and this prospectus. See “Where You Can Find More Information” below for information on how to obtain copies of any unit agreements.

We may issue units consisting of one or more securities described in this prospectus or debt or equity securities of third parties, in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

If units are offered, the applicable supplement will describe the terms of the units, including the following:

- the designation and aggregate number of, and the price at which we will issue, the units;
- the terms of the units and of the securities comprising the units, including whether and under what circumstances the securities comprising the units may or may not be held or transferred separately;
- the name of the unit agent;
- a description of the terms of any unit agreement to be entered into between us and a bank or trust company, as unit agent, governing the units;
- if applicable, a discussion of the U.S. federal income tax consequences;
- whether the units will be listed on any securities exchange; and
- a description of the provisions for the payment, settlement, transfer, or exchange of the units.

### Unit Agreements: Prepaid, Non-Prepaid, and Other

If a unit includes one or more purchase contracts, and all those purchase contracts are prepaid purchase contracts, we will issue the unit under a “prepaid unit agreement.”  
Prepaid unit

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agreements will reflect the fact that the holders of the related units have no further obligations under the purchase contracts included in their units. If a unit includes one or more non-prepaid purchase contracts, we will issue the unit under a “non-prepaid unit agreement.” Non-prepaid unit agreements will reflect the fact that the holders have payment or other obligations under one or more of the purchase contracts comprising their units. We may also issue units under other kinds of unit agreements, which will be described in the applicable supplement, if applicable.

Each holder of units issued under a non-prepaid unit agreement will:

- be bound by the terms of each non-prepaid purchase contract included in the holder’s units and by the terms of the unit agreement with respect to those contracts; and
- appoint the unit agent as its authorized agent to execute, deliver, and perform on the holder’s behalf each non-prepaid purchase contract included in the holder’s units.

Any unit agreement for a unit that includes a non-prepaid purchase contract also will include provisions regarding the holder’s pledge of collateral and special settlement provisions. These are described above under the heading “Description of Purchase Contracts.”

A unit agreement also may serve as the governing document for a security included in a unit. For example, a non-prepaid purchase contract that is part of a unit may be issued under and governed by the relevant unit agreement.

### **Modification**

We and the unit agent may amend the terms of any unit agreement and the units without the consent of the holders to cure any ambiguity, to correct any inconsistent provision, or in any other manner we deem necessary or desirable and which will not affect adversely the interests of the holders. In addition, we may amend the unit agreement and the terms of the units with the consent of the holders of a majority of the outstanding unexpired units affected. However, any modification to the units that materially and adversely affects the rights of the holders of the units, or reduces the percentage of outstanding units required to modify or amend the unit agreement or the terms of the units, requires the consent of the affected holders.

### **Enforceability of Rights of Unitholders; No Trust Indenture Act Protection**

The unit agent will act solely as our agent and will not assume any obligation or relationship of agency or trust with the holders of the units. Except as described below, any record holder of a unit, without anyone else’s consent, may enforce his or her rights as holder under any security included in the unit, in accordance with the terms of the included security and the indenture, warrant agreement, unit agreement, or purchase contract under which that security is issued. We describe these terms in other sections of this prospectus relating to debt securities, warrants, and purchase contracts.

Notwithstanding the foregoing, a unit agreement may limit or otherwise affect the ability of a holder of units issued under that agreement to enforce his or her rights, including any right to bring legal action, with respect to those units or any included securities, other than debt securities. We will describe any limitations of this kind in the applicable supplement.

No unit agreement will be qualified as an indenture, and no unit agent will be required to qualify as a trustee under the Trust Indenture Act of 1939. Therefore, holders of units issued under a unit agreement will not have the protection of the Trust Indenture Act of 1939 with respect to their units.

## DESCRIPTION OF PREFERRED STOCK

### General

We may issue preferred stock in one or more series, each with the preferences, designations, limitations, conversion rights, and other rights as we may determine. As of the date of this prospectus, under our Amended and Restated Certificate of Incorporation, we have authority to issue 100,000,000 shares of preferred stock, par value \$.01 per share. As of the date of this prospectus, we had approximately 3.69 million issued and outstanding shares of preferred stock and the aggregate liquidation preference of all of our outstanding preferred stock was approximately \$22.7 billion.

Any preferred stock sold under this prospectus will have the general dividend, voting, and liquidation preference rights stated below unless we specify otherwise in the applicable supplement. The applicable supplement for a series of preferred stock will describe the specific terms of those shares, including, where applicable:

- the title and stated value of the preferred stock;
- the aggregate number of shares of preferred stock offered;
- the offering price or prices of the preferred stock;
- the dividend rate or rates or method of calculation, the dividend period, and the dates dividends will be payable;
- whether dividends are cumulative or noncumulative, and, if cumulative, the date the dividends will begin to cumulate;
- the dividend and liquidation preference rights of the preferred stock relative to any existing or future series of our preferred stock;
- the dates the preferred stock become subject to redemption at our option, and any redemption terms;
- any redemption or sinking fund provisions, including any restriction on the repurchase or redemption of the preferred stock while there is an arrearage in the payment of dividends;
- whether the preferred stock will be issued in other than book-entry form;
- whether the preferred stock will be listed on any securities exchange;
- any rights on the part of the stockholder or us to convert the preferred stock into shares of our common stock or any other security; and
- any additional voting, liquidation, preemptive, and other rights, preferences, privileges, limitations, and restrictions.

Shares of our preferred stock will be uncertificated unless our board of directors by resolution determines otherwise. Shares represented by an existing certificate will remain certificated until such certificate is surrendered to us.

This brief summary does not purport to be complete and is qualified in its entirety by reference to the description of these securities contained in our Amended and Restated Certificate of Incorporation and the respective certificates of designation for each series of our preferred stock.



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### **Dividends**

The holders of our preferred stock will be entitled to receive when, as, and if declared by our board of directors, cash dividends at those rates as will be fixed by our board of directors, subject to the terms of our Amended and Restated Certificate of Incorporation. All dividends will be paid out of funds that are legally available for this purpose. Unless we specify otherwise in the applicable supplement, whenever dividends on any non-voting preferred stock are in arrears for three or more semi-annual dividend periods or six quarterly dividend periods, as applicable (whether or not consecutive), holders of the non-voting preferred stock will have the right to elect two additional directors to serve on our board of directors, and these two additional directors will continue to serve until full dividends on such non-voting preferred stock have been paid regularly for at least four quarterly dividend periods.

### **Voting**

The holders of our preferred stock will have no voting rights except:

- as required by applicable law; or
- as specifically approved by us for that particular series.

Under regulations adopted by the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), if the holders of any series of our preferred stock become entitled to vote for the election of directors because dividends on that series are in arrears, that series may then be deemed a “class of voting securities.” In such a case, a holder of 25% or more of the series, or a holder of 5% or more if that holder would also be considered to exercise a “controlling influence” over us, may then be subject to regulation as a bank holding company in accordance with the The Bank Holding Company Act of 1956. In addition, (1) any other bank holding company may be required to obtain the prior approval of the Federal Reserve Board to acquire or retain 5% or more of that series, and (2) any person other than a bank holding company may be required to obtain the approval of the Federal Reserve Board to acquire or retain 10% or more of that series.

### **Liquidation Preference**

In the event of our voluntary or involuntary dissolution, liquidation, or winding up, the holders of any series of our preferred stock will be entitled to receive, after distributions to holders of any series or class of our capital stock ranking superior, an amount equal to the stated or liquidation value of the shares of the series plus an amount equal to accrued and unpaid dividends. If the assets and funds to be distributed among the holders of our preferred stock will be insufficient to permit full payment to the holders, then the holders of our preferred stock will share ratably in any distribution of our assets in proportion to the amounts that they otherwise would receive on their shares of our preferred stock if the shares were paid in full. In addition, holders of our preferred stock, or depositary shares representing interests in our preferred stock, may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding.

### **Preemptive Rights**

Unless we specify otherwise in the applicable supplement, holders of our preferred stock will not have any preemptive rights.

### **Existing Preferred Stock**

As of the date of this prospectus, under our Amended and Restated Certificate of Incorporation, we have authority to issue 100,000,000 shares of preferred stock, par value \$.01 per share. As of

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the date of this prospectus, we had approximately 3.69 million issued and outstanding shares of preferred stock and the aggregate liquidation preference of all of our outstanding preferred stock was approximately \$22.7 billion. Of our authorized and outstanding preferred stock, as of the date of this prospectus:

- 35,045 shares were designated as 7% Cumulative Redeemable Preferred Stock, Series B (the “Series B Preferred Stock”), having a liquidation preference of \$100 per share, 7,571 shares of which were issued and outstanding;
- 34,500 shares were designated as 6.204% Non-Cumulative Preferred Stock, Series D (the “Series D Preferred Stock”), having a liquidation preference of \$25,000 per share, 26,174 shares of which were issued and outstanding;
- 85,100 shares were designated as Floating Rate Non-Cumulative Preferred Stock, Series E (the “Series E Preferred Stock”), having a liquidation preference of \$25,000 per share, 12,691 shares of which were issued and outstanding;
- 7,001 shares were designated as Floating Rate Non-Cumulative Preferred Stock, Series F (the “Series F Preferred Stock”), having a liquidation preference of \$100,000 per share, 1,410 shares of which were issued and outstanding;
- 8,501 shares were designated as Adjustable Rate Non-Cumulative Preferred Stock, Series G (the “Series G Preferred Stock”), having a liquidation preference of \$100,000 per share, 4,926 shares of which were issued and outstanding;
- 25,300 shares were designated as 6.625% Non-Cumulative Preferred Stock, Series I (the “Series I Preferred Stock”), having a liquidation preference of \$25,000 per share, 14,584 shares of which were issued and outstanding;
- 240,000 shares were designated as Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K (the “Series K Preferred Stock”), having a liquidation preference of \$25,000 per share, 61,773 shares of which were issued and outstanding;
- 6,900,000 shares were designated as 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L (the “Series L Preferred Stock”), having a liquidation preference of \$1,000 per share, 3,080,182 shares of which were issued and outstanding;
- 160,000 shares were designated as Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M (the “Series M Preferred Stock”), having a liquidation preference of \$25,000 per share, 52,399 shares of which were issued and outstanding;
- 50,000 shares were designated as 6% Non-Cumulative Perpetual Preferred Stock, Series T (the “Series T Preferred Stock”), having a liquidation preference of \$100,000 per share, 50,000 shares of which were issued and outstanding;
- 40,000 shares were designated as Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U (the “Series U Preferred Stock”), having a liquidation preference of \$25,000 per share, 40,000 shares of which were issued and outstanding;
- 60,000 shares were designated as Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V (the “Series V Preferred Stock”), having a liquidation preference of \$25,000 per share, 60,000 shares of which were issued and outstanding;

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- 46,000 shares were designated as 6.625% Non-Cumulative Preferred Stock, Series W (the “Series W Preferred Stock”), having a liquidation preference of \$25,000 per share, 44,000 shares of which were issued and outstanding;
- 80,000 shares were designated as Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X (the “Series X Preferred Stock”), having a liquidation preference of \$25,000 per share, 80,000 shares of which were issued and outstanding;
- 44,000 shares were designated as 6.500% Non-Cumulative Preferred Stock, Series Y (the “Series Y Preferred Stock”), having a liquidation preference of \$25,000 per share, 44,000 shares of which were issued and outstanding;
- 56,000 shares were designated as Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z (the “Series Z Preferred Stock”), having a liquidation preference of \$25,000 per share, 56,000 shares of which were issued and outstanding;
- 21,000 shares were designated as Floating Rate Non-Cumulative Preferred Stock, Series 1 (the “Series 1 Preferred Stock”), having a liquidation preference of \$30,000 per share, 3,275 shares of which were issued and outstanding;
- 37,000 shares were designated as Floating Rate Non-Cumulative Preferred Stock, Series 2 (the “Series 2 Preferred Stock”), having a liquidation preference of \$30,000 per share, 9,967 shares of which were issued and outstanding;
- 27,000 shares were designated as 6.375% Non-Cumulative Preferred Stock, Series 3 (the “Series 3 Preferred Stock”), having a liquidation preference of \$30,000 per share, 21,773 shares of which were issued and outstanding;
- 20,000 shares were designated as Floating Rate Non-Cumulative Preferred Stock, Series 4 (the “Series 4 Preferred Stock”), having a liquidation preference of \$30,000 per share, 7,010 shares of which were issued and outstanding; and
- 50,000 shares were designated as Floating Rate Non-Cumulative Preferred Stock, Series 5 (the “Series 5 Preferred Stock”), having a liquidation preference of \$30,000 per share, 14,056 shares of which were issued and outstanding.

In addition, as of the date of this prospectus, the following series of preferred stock were designated, but no shares of any of these series were outstanding:

- 3 million shares of ESOP Convertible Preferred Stock, Series C;
- 20 million shares of \$2.50 Cumulative Convertible Preferred Stock, Series BB;
- 124,200 shares of 8.20% Non-Cumulative Preferred Stock, Series H;
- 41,400 shares of 7.25% Non-Cumulative Preferred Stock, Series J;
- 600,000 shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series N;
- 400,000 shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series Q;
- 800,000 shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series R;
- 1,286,000 shares of Common Equivalent Junior Preferred Stock, Series S;

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- 65,000 shares of 6.70% Noncumulative Perpetual Preferred Stock, Series 6;
- 50,000 shares of 6.25% Noncumulative Perpetual Preferred Stock, Series 7; and
- 89,100 shares of 8.625% Non-Cumulative Preferred Stock, Series 8.

The following summary of our Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock and Series 5 Preferred Stock is qualified in its entirety by reference to the description of these securities contained in our Amended and Restated Certificate of Incorporation and the respective certificate of designations for each series.

### ***Series B Preferred Stock***

*Preferential Rights.* The Series B Preferred Stock ranks senior to the common stock and ranks equally with the Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on liquidation. Shares of the Series B Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. We may issue stock with preferences senior or equal to the Series B Preferred Stock without the consent of holders of Series B Preferred Stock.

*Dividends.* Holders of shares of Series B Preferred Stock are entitled to receive, when and as declared by our board of directors, cumulative cash dividends at an annual dividend rate per share of 7.00% of the stated value per share of Series B Preferred Stock. The stated value per share of the Series B Preferred Stock is \$100. Dividends are payable quarterly. We cannot declare or pay cash dividends on any shares of common stock unless full cumulative dividends on the Series B Preferred Stock have been paid or declared and funds sufficient for the payment have been set apart.

*Voting Rights.* Each share of Series B Preferred Stock has equal voting rights, share for share, with each share of common stock.

*Distributions.* In the event of our voluntary or involuntary dissolution, liquidation, or winding up, the holders of Series B Preferred Stock are entitled to receive, after payment of the full liquidation preference on shares of any class of preferred stock ranking senior to Series B Preferred Stock, but before any distribution on shares of common stock, liquidating distributions in the amount of the liquidation preference of \$100 per share plus accumulated dividends.

*Redemption.* Shares of Series B Preferred Stock are redeemable, in whole or in part, at the option of the holders, at the redemption price of \$100 per share plus accumulated dividends, provided that (1) full cumulative dividends have been paid, or declared, and funds sufficient for payment set apart, upon any class or series of preferred stock ranking senior to the Series B Preferred Stock; and (2) we are not then in default or in arrears on any sinking fund or analogous fund or call for tenders obligation or agreement for the purchase of any class or series of preferred stock ranking senior to Series B Preferred Stock.

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### *Series D Preferred Stock*

*Preferential Rights.* The Series D Preferred Stock ranks senior to our common stock and ranks equally with Series B Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series D Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series D Preferred Stock do not have any preemptive rights. We may issue stock with preferences superior or equal to the Series D Preferred Stock without the consent of the holders of the Series D Preferred Stock.

*Dividends.* Holders of the Series D Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, at an annual dividend rate per share of 6.204% on the liquidation preference of \$25,000 per share. Dividends on the Series D Preferred Stock are non-cumulative and are payable quarterly in arrears. As long as shares of Series D Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series D Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series D Preferred 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. If we declare dividends on the Series D Preferred Stock and on any capital stock ranking equally with the Series D Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis among the holders of the shares of Series D Preferred Stock and the holders of any capital stock ranking equally with the Series D Preferred Stock.

*Voting Rights.* Holders of Series D Preferred Stock do not have voting rights, except as specifically required by Delaware law and in the case of certain dividend arrearages in relation to the Series D Preferred Stock. If any quarterly dividend payable on the Series D Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series D Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series D Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series D Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series D Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series D Preferred Stock are entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series D Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series D Preferred Stock are not subject to a sinking fund.

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*Redemption.* We may redeem the Series D Preferred Stock, in whole or in part, at our option, on any dividend payment date for the Series D Preferred Stock, at the redemption price equal to \$25,000 per share, plus any declared and unpaid dividends.

### ***Series E Preferred Stock***

*Preferential Rights.* The Series E Preferred Stock ranks senior to our common stock and ranks equally with the Series B Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series E Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series E Preferred Stock do not have any preemptive rights. We may issue stock with preferences superior or equal to the Series E Preferred Stock without the consent of the holders of the Series E Preferred Stock.

*Dividends.* Holders of the Series E Preferred Stock are entitled to receive cash dividends when, as, and if declared by our board of directors or a duly authorized committee of our board, on the liquidation preference of \$25,000 per share at an annual rate per share equal to the greater of (a) three-month LIBOR plus a spread of 0.35%, and (b) 4.00%. Dividends on the Series E Preferred Stock are non-cumulative and are payable quarterly in arrears. As long as shares of Series E Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series E Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series E Preferred 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. If we declare dividends on the Series E Preferred Stock and on any capital stock ranking equally with the Series E Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis among the holders of the shares of Series E Preferred Stock and the holders of any capital stock ranking equally with the Series E Preferred Stock.

*Voting Rights.* Holders of Series E Preferred Stock do not have voting rights, except as specifically required by Delaware law and in the case of certain dividend arrearages in relation to the Series E Preferred Stock. If any quarterly dividend payable on the Series E Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series E Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series E Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series E Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series E Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series E Preferred Stock are entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or

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set aside for the holders of our capital stock ranking junior to the Series E Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series E Preferred Stock are not subject to a sinking fund.

*Redemption.* We may redeem the Series E Preferred Stock in whole or in part, at our option, on any dividend payment date for the Series E Preferred Stock, at the redemption price equal to \$25,000 per share, plus any declared and unpaid dividends.

### ***Series F Preferred Stock***

*Preferential Rights.* The Series F Preferred Stock ranks senior to our common stock and ranks equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. The Series F Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series F Preferred Stock do not have any preemptive rights. We may issue stock with preferences superior or equal to the Series F Preferred Stock without the consent of the holders of the Series F Preferred Stock.

*Dividends.* Holders of the Series F Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board out of funds legally available for payment, on the liquidation preference of \$100,000 per share of Series F Preferred Stock. Dividends on each share of Series F Preferred Stock will accrue on the liquidation preference of \$100,000 per share at a rate per year equal to the greater of (a) three-month LIBOR plus a spread of 0.40%, and (b) 4.00%. Dividends on the Series F Preferred Stock are non-cumulative and are payable quarterly in arrears. As long as shares of Series F preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series F Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series F Preferred Stock 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. If we declare dividends on the Series F Preferred Stock and on any capital stock ranking equally with the Series F Preferred Stock but cannot make full payment of those declared dividends, we 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 capital stock ranking equally with the Series F Preferred Stock.

*Voting Rights.* Holders of Series F Preferred Stock do not have voting rights, except as specifically required by Delaware law.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series F Preferred Stock are entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series F Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series F Preferred Stock are not subject to a sinking fund.

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*Redemption.* We may redeem the Series F Preferred Stock, in whole or in part, at our option, on any dividend payment date for the Series F Preferred Stock at the redemption price equal to \$100,000 per share, plus dividends that have been declared but not paid plus any accrued and unpaid dividends for the then-current dividend period to the redemption date.

### ***Series G Preferred Stock***

*Preferential Rights.* The Series G Preferred Stock ranks senior to our common stock and ranks equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. The Series G Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series G Preferred Stock do not have any preemptive rights. We may issue stock with preferences superior or equal to the Series G Preferred Stock without the consent of the holders of the Series G Preferred Stock.

*Dividends.* Holders of the Series G Preferred Stock are entitled to receive cash dividends when, as, and if declared by our board of directors or a duly authorized committee thereof out of funds legally available for payment, on the liquidation preference of \$100,000 per share of Series G Preferred Stock, payable quarterly in arrears. Dividends on each share of Series G Preferred Stock will accrue on the liquidation preference of \$100,000 per share at a rate per year equal to the greater of (a) three-month LIBOR plus a spread of 0.40%, and (b) 4.00%. Dividends on the Series G Preferred Stock are non-cumulative. As long as shares of Series G Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series G Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series G Preferred Stock 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. If we declare dividends on the Series G Preferred Stock and on any capital stock ranking equally with the Series G Preferred Stock but cannot make full payment of those declared dividends, we 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 capital stock ranking equally with the Series G Preferred Stock.

*Voting Rights.* Holders of Series G Preferred Stock do not have voting rights, except as specifically required by Delaware law.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series G Preferred Stock are entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of capital stock ranking junior to the Series G Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series G Preferred Stock are not subject to a sinking fund.

*Redemption.* We may redeem the Series G Preferred Stock, in whole or in part, at our option, on any dividend payment date for the Series G Preferred Stock at the redemption price equal to



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\$100,000 per share, plus dividends that have been declared but not paid plus any accrued and unpaid dividends for the then-current dividend period to the redemption date.

### *Series I Preferred Stock*

*Preferential Rights.* The Series I Preferred Stock ranks senior to our common stock and ranks equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series I Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series I Preferred Stock do not have any preemptive rights. We may issue stock with preferences superior or equal to the Series I Preferred Stock without the consent of the holders of the Series I Preferred Stock.

*Dividends.* Holders of the Series I Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, at an annual dividend rate per share of 6.625% on the liquidation preference of \$25,000 per share. Dividends on the Series I Preferred Stock are non-cumulative and are payable quarterly in arrears. As long as shares of Series I Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series I Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series I Preferred 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. If we declare dividends on the Series I Preferred Stock and on any capital stock ranking equally with the Series I Preferred Stock but cannot make full payment of those declared dividends, we 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 capital stock ranking equally with the Series I Preferred Stock.

*Voting Rights.* Holders of Series I Preferred Stock do not have voting rights, except as specifically required by Delaware law and in the case of certain dividend arrearages in relation to the Series I Preferred Stock. If any quarterly dividend payable on the Series I Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series I Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series I Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series I Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series I Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series I Preferred Stock are entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series I Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per

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share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series I Preferred Stock are not subject to a sinking fund.

*Redemption.* We may redeem the Series I Preferred Stock, in whole or in part, at our option, on any dividend payment date for the Series I Preferred Stock on or after October 1, 2017, at the redemption price equal to \$25,000 per share, plus any declared and unpaid dividends.

### ***Series K Preferred Stock***

*Preferential Rights.* The Series K Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series K Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series K Preferred Stock do not have any preemptive rights. We may issue stock with preferences superior or equal to the Series K Preferred Stock without the consent of the holders of the Series K Preferred Stock.

*Dividends.* Holders of the Series K Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, for each semi-annual dividend period from the issue date to, but excluding, January 30, 2018, at a rate of 8.00% per annum on the liquidation preference of \$25,000 per share, payable semi-annually in arrears, and, for each quarterly dividend period from January 30, 2018 through the redemption date of the Series K Preferred Stock, at a floating rate equal to three-month LIBOR plus a spread of 3.63% per annum on the liquidation preference of \$25,000 per share, payable quarterly in arrears. Dividends on the Series K Preferred Stock are non-cumulative. As long as shares of Series K Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series K Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series K Preferred 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. If we declare dividends on the Series K Preferred Stock and on any capital stock ranking equally with the Series K Preferred Stock but cannot make full payment of those declared dividends, we 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 capital stock ranking equally with the Series K Preferred Stock.

*Voting Rights.* Holders of Series K Preferred Stock do not have voting rights, except as specifically required by Delaware law and in the case of certain dividend arrearages in relation to the Series K Preferred Stock. If any dividend payable on the Series K Preferred Stock is in arrears for three or more semi-annual dividend periods or six or more quarterly dividend periods, as applicable, whether or not for consecutive dividend periods, the holders of the Series K Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series K Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series K Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid

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full dividends on the Series K Preferred Stock for at least two semi-annual or four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series K Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series K Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series K Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series K Preferred Stock, in whole or in part, at our option, on any dividend payment date for the Series K Preferred Stock on or after January 30, 2018, at the redemption price equal to \$25,000 per share, plus any declared and unpaid dividends.

### ***Series L Preferred Stock***

*Preferential Rights.* The Series L Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Holders of the Series L Preferred Stock do not have any preemptive rights. We may issue stock with preferences superior or equal to the Series L Preferred Stock without the consent of the holders of the Series L Preferred Stock.

*Dividends.* Holders of the Series L Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, at an annual dividend rate per share of 7.25% on the liquidation preference of \$1,000 per share. Dividends on the Series L Preferred Stock are non-cumulative and are payable quarterly in arrears. As long as shares of Series L Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of common stock or other capital stock ranking junior to the Series L Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series L Preferred 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. If we declare dividends on the Series L Preferred Stock and on any capital stock ranking equally with the Series L Preferred Stock but cannot make full payment of those declared dividends, we 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 capital stock ranking equally with the Series L Preferred Stock.

*Conversion Right.* Each share of the Series L Preferred Stock may be converted at any time, at the option of the holder, into 20 shares of our common stock (which reflects an initial conversion price of \$50.00 per share of common stock) plus cash in lieu of fractional shares, subject to anti-dilution adjustments.

*Conversion at Our Option.* On or after January 30, 2013, we may, at our 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

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our 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 our common stock exceeds 130% of the then-applicable conversion price of the Series L Preferred Stock.

*Conversion Upon Certain Acquisitions.* If a make-whole acquisition occurs, holders of Series L Preferred Stock may cause this Series L Preferred Stock held by such holder to be converted into shares of our common stock, and we will, under certain circumstances, increase the conversion rate in respect of such conversions of the Series L Preferred Stock that occur during the period beginning on the effective date of the make-whole acquisition and ending on the date that is 30 days after the effective date by a number of additional shares of common stock. The amount of the make-whole adjustment, if any, will be based upon the price per share of our common stock and the effective date of the make-whole acquisition. Subject to certain exceptions, a “make-whole acquisition” occurs in the event of (1) the acquisition by a person or group of more than 50% of the voting power of our common stock, or (2) our consolidation or merger where we are not the surviving entity.

*Conversion Upon Fundamental Change.* In lieu of receiving the make-whole shares described above, if the reference price (as defined below) 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 the 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,” which is the price per share of our common stock paid in the event of a fundamental change, and (2) \$19.95, which is 50% of the closing price of our common stock on January 24, 2008, the date of the initial offering of the Series L Preferred Stock, subject to adjustment (the “base price”). If the reference price is less than the base price, holders of the Series L Preferred Stock will receive a maximum of 50.1253 shares of our common stock per share of Series L Preferred Stock, subject to adjustment, which may result in a holder receiving value that is less than the liquidation preference of the Series L Preferred Stock.

*Anti-Dilution Adjustments.* The conversion rate may be adjusted in the event of, among other things, (1) stock dividend distributions, (2) subdivisions, splits, and combinations of our common stock, (3) issuance of stock purchase rights, (4) debt or asset distributions, (5) increases in cash dividends, and (6) tender or exchange offers for our common stock.

*Voting Rights.* Holders of Series L Preferred Stock do not have voting rights, except as specifically required by Delaware law and in the case of certain dividend arrearages in relation to the Series L Preferred Stock. If any quarterly dividend payable on the Series L Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series L Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series L Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series L Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series L Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

*Liquidation Rights.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series L Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series L Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$1,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared

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dividends, to the date of liquidation. Shares of Series L Preferred Stock will not be subject to a sinking fund.

*Redemption.* We do not have any rights to redeem the Series L Preferred Stock.

### ***Series M Preferred Stock***

*Preferential Rights.* The Series M Preferred Stock ranks senior to common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Shares of the Series M Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. Holders of the Series M Preferred Stock do not have any preemptive rights. Bank of America may issue stock with preferences senior or equal to the Series M Preferred Stock without the consent of the holders of the Series M Preferred Stock.

*Dividends.* Holders of the Series M Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee thereof, for each semi-annual dividend period from the issue date through May 15, 2018, at an annual rate of 8.125% on the liquidation preference of \$25,000 per share, payable semi-annually in arrears, and, for each quarterly dividend period from May 15, 2018 through the redemption date of the Series M Preferred Stock, at an annual floating rate equal to three-month LIBOR plus a spread of 3.64% on the liquidation preference of \$25,000 per share, payable quarterly in arrears. Dividends on the Series M Preferred Stock are non-cumulative. As long as shares of Series M Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of common stock or other capital stock ranking junior to the Series M Preferred Stock 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. We cannot declare or pay cash dividends on capital stock ranking equally with the Series M Preferred 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. If we declare dividends on the Series M Preferred Stock and on any capital stock ranking equally with the Series M Preferred Stock but cannot make full payment of those declared dividends, we 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 capital stock ranking equally with the Series M Preferred Stock.

*Voting Rights.* Holders of Series M Preferred Stock do not have voting rights, except as specifically required by Delaware law and in the case of certain dividend arrearages in relation to the Series M Preferred Stock. If any dividend payable on the Series M Preferred Stock is in arrears for three or more semi-annual dividend periods or six or more quarterly dividend periods, as applicable, whether or not for consecutive dividend periods, the holders of the Series M Preferred Stock will be entitled to vote as a class, together with the holders of all series of preferred stock ranking equally with the Series M Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series M Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series M Preferred Stock for at least two semi-annual or four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

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*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series M Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of capital stock ranking junior to the Series M Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series M Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series M Preferred Stock, in whole or in part, at our option, on any dividend payment date for the Series M Preferred Stock on or after May 15, 2018, at the redemption price equal to \$25,000 per share, plus any declared and unpaid dividends.

### ***Series T Preferred Stock***

*Preferential Rights.* The Series T Preferred Stock ranks senior to the common stock and ranks equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution or winding up. Shares of the Series T Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. We may issue stock with preferences equal to the Series T Preferred Stock without the consent of holders of Series T Preferred Stock.

*Dividends.* Holders of shares of Series T Preferred Stock are entitled to receive, when, as, and if declared by our board of directors, cash dividends at an annual dividend rate per share of 6.00% of the stated value per share of Series T Preferred Stock. The stated value per share of the Series T Preferred Stock is \$100,000. Dividends are payable quarterly. We cannot declare or pay cash dividends on any shares of common stock for any period unless dividends on all outstanding shares of the Series T Preferred Stock for such period have been paid or are contemporaneously declared and paid in full (or declared and funds sufficient for the payment have been set aside for the benefit of the holders of shares of Series T Preferred Stock). When dividends are not paid (or declared and set aside for payment) on any applicable dividend payment date in full on the Series T Preferred Stock and on any stock ranking equally with the Series T Preferred Stock, all dividends declared on the Series T Preferred Stock and on any stock ranking equally with the Series T Preferred Stock and payable on such payment date will be declared pro rata.

*Voting Rights.* Holders of Series T Preferred Stock do not have voting rights, except as provided herein and as specifically required by law. As long as the Series T Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least 66 2/3% of the shares of Series T Preferred Stock, outstanding at the time (voting as a class with all other series of preferred stock ranking equally with the Series T Preferred Stock), and for so long as 10,000 shares of Series T Preferred Stock are outstanding, the affirmative vote of 50.1% of the shares of Series T outstanding, shall be necessary to permit, effect or validate (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 Series T Preferred Stock or (ii) the amendment, alteration, or repeal, whether by merger, consolidation, or otherwise, of any of the provisions of the Certificate of Incorporation or of the resolutions set forth in a certificate of designations for the Series T Preferred Stock, which would adversely affect any right, preference, or privilege or voting power of the Series T Preferred Stock, or of the holders thereof.

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*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series T Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of Bank of America's assets may be made to or set aside for the holders of our capital stock ranking junior to the Series T Preferred Stock, a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any declared and unpaid dividends, without cumulation of any undeclared dividends, to but excluding the date of liquidation, dissolution or winding up. Shares of Series T Preferred Stock will not be subject to a sinking fund. The Series T Preferred Stock may be fully subordinated to interests held by the U.S. government in the event that Bank of America Corporation enters into a receivership, insolvency, liquidation or similar proceeding.

*Redemption.* Subject to any required prior approval of the Board of Governors of the Federal Reserve System and to the satisfaction of any conditions set forth in the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System applicable to redemption of shares of the Series T Preferred Stock, we may redeem the Series T Preferred Stock, at our option, in whole at any time or in part from time to time, but in any case no earlier than May 7, 2019, at the redemption price of \$105,000 per share plus any declared and unpaid dividends thereon, without cumulation for any undeclared dividends, to the redemption date.

### ***Series U Preferred Stock***

*Preferential Rights.* The Series U Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series U Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series U Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series U Preferred Stock without the consent of the holders of the Series U Preferred Stock.

*Dividends.* Holders of the Series U Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, for each semi-annual dividend period from the issue date to, but excluding, June 1, 2023, at a rate of 5.20% per annum on the liquidation preference of \$25,000 per share, payable semi-annually in arrears, and, for each quarterly dividend period from June 1, 2023 through the redemption date of the Series U Preferred Stock, at a floating rate equal to three-month LIBOR plus a spread of 3.135% per annum on the liquidation preference of \$25,000 per share, payable quarterly in arrears. Dividends on the Series U Preferred Stock are non-cumulative. As long as shares of Series U Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series U Preferred Stock unless full dividends on all outstanding shares of Series U Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. We cannot declare or pay cash dividends on capital stock ranking equally with the Series U Preferred Stock for any period unless full dividends on all outstanding shares of Series U Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. If we declare dividends on the Series U Preferred Stock and on any capital stock ranking equally with the Series U Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis.

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among the holders of the shares of Series U Preferred Stock and the holders of any capital stock ranking equally with the Series U Preferred Stock.

*Voting Rights.* Holders of Series U Preferred Stock do not have voting rights, except as described herein and as specifically required by Delaware law. If any dividend payable on the Series U Preferred Stock is in arrears for three or more semi-annual dividend periods or six or more quarterly dividend periods, as applicable, whether or not for consecutive dividend periods, the holders of the Series U Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series U Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series U Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series U Preferred Stock for at least two semi-annual or four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate. As long as the Series U Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series U Preferred Stock and any voting parity stock shall be necessary to authorize, create or issue any capital stock ranking senior to the Series U Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding-up, or to reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. In addition, so long as any shares of the Series U Preferred Stock remain outstanding, the affirmative vote of the holders of at least 66 2/3% of the voting power of the Series U Preferred Stock shall be necessary to amend, alter or repeal any provision of the certificate of designations for the Series U Preferred Stock or our certificate of incorporation so as to adversely affect the powers, preferences or special rights of the Series U Preferred Stock.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series U Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series U Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series U Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series U Preferred Stock, in whole or in part, at our option, at any time on or after June 1, 2023, at the redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends, for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends. In addition, at any time within 90 days after a “capital treatment event,” as described in the certificate of designations for the Series U Preferred Stock, we may redeem the Series U Preferred Stock, in whole but not in part, at a redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends.

### ***Series V Preferred Stock***

*Preferential Rights.* The Series V Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred



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Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series V Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series V Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series V Preferred Stock without the consent of the holders of the Series V Preferred Stock.

*Dividends.* Holders of the Series V Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, for each semi-annual dividend period from the issue date to, but excluding, June 17, 2019, at a rate of 5.125% per annum on the liquidation preference of \$25,000 per share, payable semi-annually in arrears, and, for each quarterly dividend period from June 17, 2019 through the redemption date of the Series V Preferred Stock, at a floating rate equal to three-month LIBOR plus a spread of 3.387% per annum on the liquidation preference of \$25,000 per share, payable quarterly in arrears. Dividends on the Series V Preferred Stock are non-cumulative. As long as shares of Series V Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series V Preferred Stock unless full dividends on all outstanding shares of Series V Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. We cannot declare or pay cash dividends on capital stock ranking equally with the Series V Preferred Stock for any period unless full dividends on all outstanding shares of Series V Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. If we declare dividends on the Series V Preferred Stock and on any capital stock ranking equally with the Series V Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis among the holders of the shares of Series V Preferred Stock and the holders of any capital stock ranking equally with the Series V Preferred Stock.

*Voting Rights.* Holders of Series V Preferred Stock do not have voting rights, except as provided herein and as specifically required by Delaware law and in the case of certain dividend arrearages in relation to the Series V Preferred Stock. If any dividend payable on the Series V Preferred Stock is in arrears for three or more semi-annual dividend periods or six or more quarterly dividend periods, as applicable, whether or not for consecutive dividend periods, the holders of the Series V Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series V Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series V Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series V Preferred Stock for at least two semi-annual or four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate. As long as the Series V Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series V Preferred Stock and any voting parity stock shall be necessary to authorize, create or issue any capital stock ranking senior to the Series V Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding-up, or to reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. In addition, so long as any shares of the Series V Preferred Stock remain outstanding, the affirmative vote of the holders of at least 66 2/3% of the voting power of the Series V Preferred Stock shall be necessary to amend, alter or repeal any provision of the certificate of designations for the Series V Preferred Stock or our certificate of incorporation so as to adversely affect the powers, preferences or special rights of the Series V Preferred Stock.

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*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series V Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series V Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series V Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series V Preferred Stock, in whole or in part, at our option, at any time on or after June 17, 2019, at the redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends, for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends. In addition, at any time within 90 days after a “capital treatment event,” as described in the certificate of designations for the Series V Preferred Stock, we may redeem the Series V Preferred Stock, in whole but not in part, at a redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends.

### ***Series W Preferred Stock***

*Preferential Rights.* The Series W Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series W Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series W Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series W Preferred Stock without the consent of the holders of the Series W Preferred Stock.

*Dividends.* Holders of the Series W Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, at an annual dividend rate per share of 6.625% on the liquidation preference of \$25,000 per share. Dividends on the Series W Preferred Stock are non-cumulative and are payable quarterly in arrears. As long as shares of Series W Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series W Preferred Stock unless full dividends on all outstanding shares of Series W Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. We cannot declare or pay cash dividends on capital stock ranking equally with the Series W Preferred Stock for any period unless full dividends on all outstanding shares of Series W Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. If we declare dividends on the Series W Preferred Stock and on any capital stock ranking equally with the Series W Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis among the holders of the shares of Series W Preferred Stock and the holders of any capital stock ranking equally with the Series W Preferred Stock.

*Voting Rights.* Holders of Series W Preferred Stock do not have voting rights, except as described herein and as specifically required by Delaware law. If any dividend payable on the

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Series W Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series W Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series W Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series W Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series W Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate. As long as the Series W Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series W Preferred Stock and any voting parity stock shall be necessary to authorize, create or issue any capital stock ranking senior to the Series W Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding-up, or to reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. In addition, so long as any shares of the Series W Preferred Stock remain outstanding, the affirmative vote of the holders of at least 66 2/3% of the voting power of the Series W Preferred Stock shall be necessary to amend, alter or repeal any provision of the certificate of designations for the Series W Preferred Stock or our certificate of incorporation so as to adversely affect the powers, preferences or special rights of the Series W Preferred Stock.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series W Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series W Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series W Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series W Preferred Stock, in whole or in part, at our option, at any time on or after September 9, 2019, at the redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends, for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends. In addition, at any time within 90 days after a “capital treatment event,” as described in the certificate of designations for the Series W Preferred Stock, we may redeem the Series W Preferred Stock, in whole but not in part, at a redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends.

### ***Series X Preferred Stock***

*Preferential Rights.* The Series X Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series X Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series X Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series X Preferred Stock without the consent of the holders of the Series X Preferred Stock.

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*Dividends.* Holders of the Series X Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, for each semi-annual dividend period from the issue date to, but excluding, September 5, 2024, at a rate of 6.250% per annum on the liquidation preference of \$25,000 per share, payable semiannually in arrears, and, for each quarterly dividend period from September 5, 2024 through the redemption date of the Series X Preferred Stock, at a floating rate equal to three-month LIBOR plus a spread of 3.705% per annum on the liquidation preference of \$25,000 per share, payable quarterly in arrears. Dividends on the Series X Preferred Stock are non-cumulative. As long as shares of Series X Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series X Preferred Stock unless full dividends on all outstanding shares of Series X Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. We cannot declare or pay cash dividends on capital stock ranking equally with the Series X Preferred Stock for any period unless full dividends on all outstanding shares of Series X Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. If we declare dividends on the Series X Preferred Stock and on any capital stock ranking equally with the Series X Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis among the holders of the shares of Series X Preferred Stock and the holders of any capital stock ranking equally with the Series X Preferred Stock.

*Voting Rights.* Holders of Series X Preferred Stock do not have voting rights, except as described herein and as specifically required by Delaware law. If any dividend payable on the Series X Preferred Stock is in arrears for three or more semi-annual dividend periods or six or more quarterly dividend periods, as applicable, whether or not for consecutive dividend periods, the holders of the Series X Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series X Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series X Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series X Preferred Stock for at least two semi-annual or four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate. As long as the Series X Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series X Preferred Stock and any voting parity stock shall be necessary to authorize, create or issue any capital stock ranking senior to the Series X Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding-up, or to reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. In addition, so long as any shares of the Series X Preferred Stock remain outstanding, the affirmative vote of the holders of at least 66 2/3% of the voting power of the Series X Preferred Stock shall be necessary to amend, alter or repeal any provision of the certificate of designations for the Series X Preferred Stock or our certificate of incorporation so as to adversely affect the powers, preferences or special rights of the Series X Preferred Stock.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series X Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series X Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series X Preferred Stock will not be subject to a sinking fund.

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*Redemption.* We may redeem the Series X Preferred Stock, in whole or in part, at our option, at any time on or after September 5, 2024, at the redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends, for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends. In addition, at any time within 90 days after a “capital treatment event,” as described in the certificate of designations for the Series X Preferred Stock, we may redeem the Series X Preferred Stock, in whole but not in part, at a redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends.

### ***Series Y Preferred Stock***

*Preferential Rights.* The Series Y Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series Y Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series Y Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series Y Preferred Stock without the consent of the holders of the Series Y Preferred Stock.

*Dividends.* Holders of the Series Y Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, at an annual dividend rate per share of 6.500% on the liquidation preference of \$25,000 per share. Dividends on the Series Y Preferred Stock are non-cumulative and are payable quarterly in arrears. As long as shares of Series Y Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series Y Preferred Stock unless full dividends on all outstanding shares of Series Y Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. We cannot declare or pay cash dividends on capital stock ranking equally with the Series Y Preferred Stock for any period unless full dividends on all outstanding shares of Series Y Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. If we declare dividends on the Series Y Preferred Stock and on any capital stock ranking equally with the Series Y Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis among the holders of the shares of Series Y Preferred Stock and the holders of any capital stock ranking equally with the Series Y Preferred Stock.

*Voting Rights.* Holders of Series Y Preferred Stock do not have voting rights, except as described herein and as specifically required by Delaware law. If any dividend payable on the Series Y Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series Y Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series Y Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series Y Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series Y Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate. As long as the Series Y Preferred Stock remains

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outstanding, the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series Y Preferred Stock and any voting parity stock shall be necessary to authorize, create or issue any capital stock ranking senior to the Series Y Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding-up, or to reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. In addition, so long as any shares of the Series Y Preferred Stock remain outstanding, the affirmative vote of the holders of at least 66 2/3% of the voting power of the Series Y Preferred Stock shall be necessary to amend, alter or repeal any provision of the certificate of designations for the Series Y Preferred Stock or our certificate of incorporation so as to adversely affect the powers, preferences or special rights of the Series Y Preferred Stock.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series Y Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series Y Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series Y Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series Y Preferred Stock, in whole or in part, at our option, at any time on or after January 27, 2020, at the redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends, for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends. In addition, at any time within 90 days after a “capital treatment event,” as described in the certificate of designations for the Series Y Preferred Stock, we may redeem the Series Y Preferred Stock, in whole but not in part, at a redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends.

### ***Series Z Preferred Stock***

*Preferential Rights.* The Series Z Preferred Stock ranks senior to our common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Series Z Preferred Stock is not convertible into or exchangeable for any shares of our common stock or any other class of our capital stock. Holders of the Series Z Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series Z Preferred Stock without the consent of the holders of the Series Z Preferred Stock.

*Dividends.* Holders of the Series Z Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee of our board, for each semi-annual dividend period from the issue date to, but excluding, October 23, 2024, at a rate of 6.500% per annum on the liquidation preference of \$25,000 per share, payable semiannually in arrears, and, for each quarterly dividend period from October 23, 2024 through the redemption date of the Series Z Preferred Stock, at a floating rate equal to three-month LIBOR plus a spread of 4.174% per annum on the liquidation preference of \$25,000 per share, payable quarterly in arrears.

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Dividends on the Series Z Preferred Stock are non-cumulative. As long as shares of Series Z Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of our common stock or other capital stock ranking junior to the Series Z Preferred Stock unless full dividends on all outstanding shares of Series Z Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. We cannot declare or pay cash dividends on capital stock ranking equally with the Series Z Preferred Stock for any period unless full dividends on all outstanding shares of Series Z Preferred Stock for the immediately preceding dividend period have been paid in full or declared and a sum sufficient for the payment thereof set aside. If we declare dividends on the Series Z Preferred Stock and on any capital stock ranking equally with the Series Z Preferred Stock but cannot make full payment of those declared dividends, we will allocate the dividend payments on a pro rata basis among the holders of the shares of Series Z Preferred Stock and the holders of any capital stock ranking equally with the Series Z Preferred Stock.

*Voting Rights.* Holders of Series Z Preferred Stock do not have voting rights, except as described herein and as specifically required by Delaware law. If any dividend payable on the Series Z Preferred Stock is in arrears for three or more semi-annual dividend periods or six or more quarterly dividend periods, as applicable, whether or not for consecutive dividend periods, the holders of the Series Z Preferred Stock will be entitled to vote as a class, together with the holders of all series of our preferred stock ranking equally with the Series Z Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series Z Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors. When we have paid full dividends on the Series Z Preferred Stock for at least two semi-annual or four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate. As long as the Series Z Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series Z Preferred Stock and any voting parity stock shall be necessary to authorize, create or issue any capital stock ranking senior to the Series Z Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding-up, or to reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. In addition, so long as any shares of the Series Z Preferred Stock remain outstanding, the affirmative vote of the holders of at least 66 2/3% of the voting power of the Series Z Preferred Stock shall be necessary to amend, alter or repeal any provision of the certificate of designations for the Series Z Preferred Stock or our certificate of incorporation so as to adversely affect the powers, preferences or special rights of the Series Z Preferred Stock.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series Z Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series Z Preferred Stock as to distributions, a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series Z Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series Z Preferred Stock, in whole or in part, at our option, at any time on or after October 23, 2024, at the redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends, for the then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends. In addition, at any time within 90 days after a “capital treatment event,” as described in the certificate of designations for the Series Z Preferred Stock, we may redeem the Series Z Preferred Stock, in whole but not in part, at a redemption price equal to \$25,000 per share, plus any accrued and unpaid dividends for the

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then-current dividend period to but excluding the redemption date, without accumulation of any undeclared dividends.

### ***Series 1 Preferred Stock***

***Preferential Rights.*** The Series 1 Preferred Stock ranks senior to common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Shares of the Series 1 Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. Holders of the Series 1 Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series 1 Preferred Stock without the consent of the holders of the Series 1 Preferred Stock.

***Dividends.*** Holders of the Series 1 Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee thereof, on the liquidation preference of \$30,000 per share at an annual floating rate per share equal to the greater of (a) three-month LIBOR, plus a spread of 0.75% and (b) 3.00%. Dividends on the Series 1 Preferred Stock are non-cumulative and are payable quarterly, if declared. As long as shares of Series 1 Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of common stock or other capital stock ranking junior to the Series 1 Preferred Stock unless full dividends on all outstanding shares of Series 1 Preferred Stock have been declared, paid or set aside for payment for the immediately preceding dividend period. We cannot declare or pay cash dividends on capital stock ranking equally with the Series 1 Preferred Stock for any period unless for such dividend period full dividends on all outstanding shares of Series 1 Preferred Stock for the immediately preceding dividend period have been declared, paid or set aside for payment. When dividends are not paid in full upon the shares of the Series 1 Preferred Stock and any capital stock ranking equally with the Series 1 Preferred Stock, all dividends declared upon shares of the Series 1 Preferred Stock and all shares of capital stock ranking equally with the Series 1 Preferred Stock shall be declared pro rata so that the amount of dividends declared per share on the Series 1 Preferred Stock, and all such other of our stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Series 1 Preferred Stock and all such other stock bear to each other.

***Voting Rights.*** Holders of Series 1 Preferred Stock do not have voting rights, except as provided herein and as specifically required by law. Holders of Series 1 Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of common stock, voting together with the holders of common stock as one class, and each share of Series 1 Preferred Stock shall be entitled to 150 votes. If any quarterly dividend payable on the Series 1 Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series 1 Preferred Stock will be entitled to vote as a class, together with the holders of all series of preferred stock ranking equally with the Series 1 Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series 1 Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors; each share of Series 1 Preferred Stock shall be entitled to three votes for the election of such Preferred Stock Directors. When we have paid full dividends on the Series 1 Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.



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As long as the Series 1 Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of Series 1 Preferred Stock, outstanding at the time (voting as a class with all other series of preferred stock ranking equally with the Series 1 Preferred Stock), shall be necessary to permit, effect or validate (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 Series 1 Preferred Stock or (ii) the amendment, alteration, or repeal, whether by merger, consolidation, or otherwise, of any of the provisions of the Certificate of Incorporation or of the resolutions set forth in a certificate of designations for the Series 1 Preferred Stock, which would adversely affect any right, preference, or privilege or voting power of the Series 1 Preferred Stock, or of the holders thereof.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series 1 Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of Bank of America capital stock ranking junior to the Series 1 Preferred Stock, a liquidating distribution in the amount of the liquidation preference of \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series 1 Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series 1 Preferred Stock, in whole or in part, at our option, at the redemption price equal to \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends.

### ***Series 2 Preferred Stock***

*Preferential Rights.* The Series 2 Preferred Stock ranks senior to common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 3 Preferred Stock, Series 4 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Shares of the Series 2 Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. Holders of the Series 2 Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series 2 Preferred Stock without the consent of the holders of the Series 2 Preferred Stock.

*Dividends.* Holders of the Series 2 Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee thereof, on the liquidation preference of \$30,000 per share at an annual floating rate per share equal to the greater of (a) three-month LIBOR, plus a spread of 0.65% and (b) 3.00%. Dividends on the Series 2 Preferred Stock are non-cumulative and are payable quarterly in arrears, if declared. As long as shares of Series 2 Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of common stock or other capital stock ranking junior to the Series 2 Preferred Stock unless full dividends on all outstanding shares of Series 2 Preferred Stock have been declared, paid or set aside for payment for the immediately preceding dividend period. We cannot declare or pay cash dividends on capital stock ranking equally with the Series 2 Preferred Stock for any period unless for such dividend period full dividends on all outstanding shares of Series 2 Preferred Stock for the immediately preceding dividend period have been declared, paid or set aside for payment. When dividends are not paid in full upon the shares of the Series 2 Preferred Stock and any capital stock ranking equally with the Series 2 Preferred Stock, all dividends declared upon shares of the

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Series 2 Preferred Stock and all shares of capital stock ranking equally with the Series 2 Preferred Stock shall be declared pro rata so that the amount of dividends declared per share on the Series 2 Preferred Stock, and all such other stock of ours shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Series 2 Preferred Stock and all such other stock bear to each other.

*Voting Rights.* Holders of Series 2 Preferred Stock do not have voting rights, except as provided herein and as specifically required by law. Holders of Series 2 Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of common stock, voting together with the holders of common stock as one class, and each share of Series 2 Preferred Stock shall be entitled to 150 votes. If any quarterly dividend payable on the Series 2 Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series 2 Preferred Stock will be entitled to vote as a class, together with the holders of all series of preferred stock ranking equally with the Series 2 Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series 2 Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors; each share of Series 2 Preferred Stock shall be entitled to three votes for the election of such Preferred Stock Directors. When we have paid full dividends on the Series 2 Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

As long as the Series 2 Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of Series 2 Preferred Stock, outstanding at the time (voting as a class with all other series of preferred stock ranking equally with the Series 2 Preferred Stock), shall be necessary to permit, effect, or validate (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 Series 2 Preferred Stock or (ii) the amendment, alteration, or repeal, whether by merger, consolidation, or otherwise, of any of the provisions of the Certificate of Incorporation or of the resolutions set forth in a certificate of designations for the Series 2 Preferred Stock, which would adversely affect any right, preference, or privilege or voting power of the Series 2 Preferred Stock, or of the holders thereof.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series 2 Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series 2 Preferred Stock, a liquidating distribution in the amount of the liquidation preference of \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series 2 Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series 2 Preferred Stock, in whole or in part, at our option, at the redemption price equal to \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends.

### ***Series 3 Preferred Stock***

*Preferential Rights.* The Series 3 Preferred Stock ranks senior to common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 4 Preferred

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Stock, and Series 5 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Shares of the Series 3 Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. Holders of the Series 3 Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series 3 Preferred Stock without the consent of the holders of the Series 3 Preferred Stock.

*Dividends.* Holders of the Series 3 Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee thereof, at an annual dividend rate per share of 6.375% on the liquidation preference of \$30,000 per share. Dividends on the Series 3 Preferred Stock are non-cumulative and are payable quarterly in arrears, if declared. As long as shares of Series 3 Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of common stock or other capital stock ranking junior to the Series 3 Preferred Stock unless full dividends on all outstanding shares of Series 3 Preferred Stock have been declared, paid or set aside for payment for the immediately preceding dividend period. We cannot declare or pay cash dividends on capital stock ranking equally with the Series 3 Preferred Stock for any period unless for such dividend period full dividends on all outstanding shares of Series 3 Preferred Stock for the immediately preceding dividend period have been declared, paid or set aside for payment. When dividends are not paid in full upon the shares of the Series 3 Preferred Stock and any capital stock ranking equally with the Series 3 Preferred Stock, all dividends declared upon shares of the Series 3 Preferred Stock and all shares of capital stock ranking equally with the Series 3 Preferred Stock shall be declared pro rata so that the amount of dividends declared per share on the Series 3 Preferred Stock, and all such other of our stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Series 3 Preferred Stock and all such other stock bear to each other.

*Voting Rights.* Holders of Series 3 Preferred Stock do not have voting rights, except as provided herein and as specifically required by law. Holders of Series 3 Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of common stock, voting together with the holders of common stock as one class, and each share of Series 3 Preferred Stock shall be entitled to 150 votes. If any quarterly dividend payable on the Series 3 Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series 3 Preferred Stock will be entitled to vote as a class, together with the holders of all series of preferred stock ranking equally with the Series 3 Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series 3 Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors; each share of Series 3 Preferred Stock shall be entitled to three votes for the election of such Preferred Stock Directors. When we have paid full dividends on the Series 3 Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

As long as the Series 3 Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of Series 3 Preferred Stock, outstanding at the time (voting as a class with all other series of preferred stock ranking equally with the Series 3 Preferred Stock), shall be necessary to permit, effect, or validate (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 Series 3 Preferred Stock or (ii) the amendment, alteration, or repeal, whether by merger, consolidation, or otherwise, of any of the provisions of the Certificate of Incorporation or of the resolutions set forth in a certificate of designations for the Series 3 Preferred Stock, which would adversely affect any right, preference, or privilege or voting power of the Series 3 Preferred Stock, or of the holders thereof.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series 3 Preferred Stock will be entitled to receive out of assets legally available for

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distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series 3 Preferred Stock, a liquidating distribution in the amount of the liquidation preference of \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series 3 Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series 3 Preferred Stock, in whole or in part, at our option, at the redemption price equal to \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends.

### ***Series 4 Preferred Stock***

*Preferential Rights.* The Series 4 Preferred Stock ranks senior to common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, and Series 5 Preferred Stock as to dividends and distributions on Bank of America's liquidation, dissolution, or winding up. Shares of the Series 4 Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. Holders of the Series 4 Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series 4 Preferred Stock without the consent of the holders of the Series 4 Preferred Stock.

*Dividends.* Holders of the Series 4 Preferred Stock are entitled to receive cash dividends, when, as, and if declared by our board of directors or a duly authorized committee thereof, on the liquidation preference of \$30,000 per share at an annual floating rate per share equal to the greater of (a) three-month LIBOR, plus a spread of 0.75% and (b) 4.00%. Dividends on the Series 4 Preferred Stock are non-cumulative and are payable quarterly in arrears, if declared. As long as shares of Series 4 Preferred Stock remain outstanding, we cannot declare or pay cash dividends on any shares of common stock or other capital stock ranking junior to the Series 4 Preferred Stock unless full dividends on all outstanding shares of Series 4 Preferred Stock have been declared, paid or set aside for payment for the immediately preceding dividend period. We cannot declare or pay cash dividends on capital stock ranking equally with the Series 4 Preferred Stock for any period unless for such dividend period full dividends on all outstanding shares of Series 4 Preferred Stock for the immediately preceding dividend period have been declared, paid or set aside for payment. When dividends are not paid in full upon the shares of the Series 4 Preferred Stock and any capital stock ranking equally with the Series 4 Preferred Stock, all dividends declared upon shares of the Series 4 Preferred Stock and all shares of capital stock ranking equally with the Series 4 Preferred Stock shall be declared pro rata so that the amount of dividends declared per share on the Series 4 Preferred Stock, and all such other of our stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Series 4 Preferred Stock and all such other stock bear to each other.

*Voting Rights.* Holders of Series 4 Preferred Stock do not have voting rights, except as provided herein and as specifically required by law. Holders of Series 4 Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of common stock, voting together with the holders of common stock as one class, and each share of Series 4 Preferred Stock shall be entitled to 150 votes. If any quarterly dividend payable on the Series 4 Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series 4 Preferred Stock will be entitled to vote as a class, together with the holders

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of all series of preferred stock ranking equally with the Series 4 Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series 4 Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors; each share of Series 4 Preferred Stock shall be entitled to three votes for the election of such Preferred Stock Directors. When we have paid full dividends on the Series 4 Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

As long as the Series 4 Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of Series 4 Preferred Stock, outstanding at the time (voting as a class with all other series of preferred stock ranking equally with the Series 4 Preferred Stock), shall be necessary to permit, effect, or validate (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 Series 4 Preferred Stock or (ii) the amendment, alteration, or repeal, whether by merger, consolidation, or otherwise, of any of the provisions of the Certificate of Incorporation or of the resolutions set forth in a certificate of designations for the Series 4 Preferred Stock, which would adversely affect any right, preference, or privilege or voting power of the Series 4 Preferred Stock, or of the holders thereof.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series 4 Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series 4 Preferred Stock, a liquidating distribution in the amount of the liquidation preference of \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series 4 Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series 4 Preferred Stock, in whole or in part, at our option, at the redemption price equal to \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends.

### ***Series 5 Preferred Stock***

*Preferential Rights.* The Series 5 Preferred Stock ranks senior to common stock and equally with the Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock, Series K Preferred Stock, Series L Preferred Stock, Series M Preferred Stock, Series T Preferred Stock, Series U Preferred Stock, Series V Preferred Stock, Series W Preferred Stock, Series X Preferred Stock, Series Y Preferred Stock, Series Z Preferred Stock, Series 1 Preferred Stock, Series 2 Preferred Stock, Series 3 Preferred Stock, and Series 4 Preferred Stock as to dividends and distributions on our liquidation, dissolution, or winding up. Shares of the Series 5 Preferred Stock are not convertible into or exchangeable for any shares of common stock or any other class of our capital stock. Holders of the Series 5 Preferred Stock do not have any preemptive rights. We may issue stock with preferences equal to the Series 5 Preferred Stock without the consent of the holders of the Series 5 Preferred Stock.

*Dividends.* Holders of the Series 5 Preferred Stock are entitled to receive cash dividends, when, as, and if declared by the our board of directors or a duly authorized committee thereof, on the liquidation preference of \$30,000 per share at an annual floating rate per share equal to the greater of (a) three-month LIBOR, plus a spread of 0.50% and (b) 4.00%. Dividends on the Series 5 Preferred Stock are non-cumulative and are payable quarterly in arrears, if declared. As long as shares of Series 5 Preferred Stock remain outstanding, we cannot declare or pay cash dividends on

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any shares of common stock or other capital stock ranking junior to the Series 5 Preferred Stock unless full dividends on all outstanding shares of Series 5 Preferred Stock have been declared, paid or set aside for payment for the immediately preceding dividend period. We cannot declare or pay cash dividends on capital stock ranking equally with the Series 5 Preferred Stock for any period unless for such dividend period full dividends on all outstanding shares of Series 5 Preferred Stock for the immediately preceding dividend period have been declared, paid or set aside for payment. When dividends are not paid in full upon the shares of the Series 5 Preferred Stock and any capital stock ranking equally with the Series 5 Preferred Stock, all dividends declared upon shares of the Series 5 Preferred Stock and all shares of capital stock ranking equally with the Series 5 Preferred Stock shall be declared pro rata so that the amount of dividends declared per share on the Series 5 Preferred Stock, and all such other of our stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Series 5 Preferred Stock and all such other stock bear to each other.

*Voting Rights.* Holders of Series 5 Preferred Stock do not have voting rights, except as provided herein and as specifically required by law. Holders of Series 5 Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of common stock, voting together with the holders of common stock as one class, and each share of Series 5 Preferred Stock shall be entitled to 150 votes. If any quarterly dividend payable on the Series 5 Preferred Stock is in arrears for six or more quarterly dividend periods, whether or not for consecutive dividend periods, the holders of the Series 5 Preferred Stock will be entitled to vote as a class, together with the holders of all series of preferred stock ranking equally with the Series 5 Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted to the holders of Series 5 Preferred Stock have been conferred and are exercisable, for the election of two Preferred Stock Directors; each share of Series 5 Preferred Stock shall be entitled to three votes for the election of such Preferred Stock Directors. When we have paid full dividends on the Series 5 Preferred Stock for at least four quarterly dividend periods following a dividend arrearage described above, these voting rights will terminate.

As long as the Series 5 Preferred Stock remains outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of Series 5 Preferred Stock, outstanding at the time (voting as a class with all other series of preferred stock ranking equally with the Series 5 Preferred Stock), shall be necessary to permit, effect, or validate (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 Series 5 Preferred Stock or (ii) the amendment, alteration, or repeal, whether by merger, consolidation, or otherwise, of any of the provisions of the Certificate of Incorporation or of the resolutions set forth in a certificate of designations for the Series 5 Preferred Stock, which would adversely affect any right, preference, or privilege or voting power of the Series 5 Preferred Stock, or of the holders thereof.

*Distributions.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, holders of Series 5 Preferred Stock will be entitled to receive out of assets legally available for distribution to stockholders, before any distribution or payment out of our assets may be made to or set aside for the holders of our capital stock ranking junior to the Series 5 Preferred Stock, a liquidating distribution in the amount of the liquidation preference of \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends, to the date of liquidation. Shares of Series 5 Preferred Stock will not be subject to a sinking fund.

*Redemption.* We may redeem the Series 5 Preferred Stock, in whole or in part, at our option, at the redemption price equal to \$30,000 per share, plus any declared and unpaid dividends, without accumulation of any undeclared dividends.

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### **Additional Classes or Series of Stock**

We will have the right to create and issue additional classes or series of stock ranking equally with or junior to our preferred stock as to dividends and distribution of assets upon any liquidation, dissolution, or winding up without the consent of the holders of such preferred stock, or the holders of the related depositary shares.

## **DESCRIPTION OF DEPOSITARY SHARES**

### **General**

We may offer depositary receipts evidencing depositary shares, each of which will represent a fractional interest in shares of preferred stock, rather than full shares of these securities. We will deposit shares of preferred stock of each series represented by depositary shares under a deposit agreement between us and a U.S. bank or trust company that we will select (the “depository”).

This section describes some of the general terms and provisions applicable to all depositary shares. We will describe the specific terms of a series of depositary shares and the deposit agreement in the applicable supplement. The following description and any description of the depositary shares in the applicable supplement may not be complete and is subject to and qualified in its entirety by reference to the terms and provisions of the applicable deposit agreement and depositary receipts. Forms of the deposit agreement and depositary receipts reflecting the particular terms and provisions of a series of offered depositary shares will be filed with the SEC in connection with the offering and incorporated by reference in the registration statement and this prospectus. See “Where You Can Find More Information” below for information on how to obtain copies of any deposit agreements and depositary receipts.

### **Terms of the Depositary Shares**

Depositary receipts issued under the deposit agreement will evidence the depositary shares. Depositary receipts will be distributed to those persons purchasing depositary shares representing fractional shares of preferred stock in accordance with the terms of the offering. Subject to the terms of the deposit agreement, each holder of a depositary share will be entitled, in proportion to the fractional interest of a share of preferred stock represented by the applicable depositary share, to all the rights and preferences of the preferred stock being represented, including dividend, voting, redemption, conversion, and liquidation rights, all as will be set forth in the applicable supplement relating to the depositary shares being offered.

Pending the preparation of definitive depositary receipts, the depository, upon our written order, may issue temporary depositary receipts. The temporary depositary receipts will be substantially identical to, and will have all the rights of, the definitive depositary receipts, but will not be in definitive form. Definitive depositary receipts will be prepared thereafter and temporary depositary receipts will be exchanged for definitive depositary receipts at our expense.

### **Withdrawal of Preferred Stock**

Unless the depositary shares have been called for redemption, a holder of depositary shares may surrender his or her depositary receipts at the principal office of the depository, pay any charges, and comply with any other terms as provided in the deposit agreement for the number of shares of preferred stock underlying the depositary shares. A holder of depositary shares who withdraws shares of preferred stock will be entitled to receive whole shares of preferred stock on the basis set forth in the applicable supplement relating to the depositary shares being offered.

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However, unless we specify otherwise in the applicable supplement, holders of whole shares of preferred stock will not be entitled to deposit those shares under the deposit agreement or to receive depositary receipts for those shares after the withdrawal. If the depositary shares surrendered by the holder in connection with the withdrawal exceed the number of depositary shares that represent the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to the holder at the same time a new depositary receipt evidencing the excess number of depositary shares.

### **Dividends and Other Distributions**

The depositary will distribute all cash dividends or other cash distributions received in respect of the preferred stock to the record holders of depositary shares relating to that preferred stock in proportion to the number of depositary shares owned by those holders. However, the depositary will distribute only the amount that can be distributed without attributing to any holder of depositary shares a fraction of one cent. Any balance that is not distributed will be added to and treated as part of the next sum received by the depositary for distribution to record holders.

If there is a distribution other than in cash, the depositary will distribute property it receives to the record holders of depositary shares who are entitled to that property. However, if the depositary determines that it is not feasible to make this distribution of property, the depositary, with our approval, may sell that property and distribute the net proceeds to the holders of the depositary shares.

### **Redemption of Depositary Shares**

If a series of preferred stock which relates to depositary shares is redeemed, the depositary shares will be redeemed from the proceeds received by the depositary from the redemption, in whole or in part, of that series of preferred stock. Unless we specify otherwise in the applicable supplement, the depositary will mail notice of redemption at least 30 and not more than 60 calendar days before the date fixed for redemption to the record holders of the depositary shares to be redeemed at their addresses appearing in the depositary's books. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share payable on that series of the preferred stock.

Whenever we redeem preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the preferred stock redeemed. If less than all of the depositary shares are redeemed, the depositary shares redeemed will be selected by lot or pro rata.

After the date fixed for redemption, the depositary shares called for redemption will no longer be deemed to be outstanding. At that time, all rights of the holder of the depositary shares will cease, except the right to receive any money or other property they become entitled to receive upon surrender to the depositary of the depositary receipts.

### **Voting the Deposited Preferred Stock**

Any voting rights of holders of the depositary shares are directly dependent on the voting rights of the underlying preferred stock, which customarily have limited voting rights. Upon receipt of notice of any meeting at which the holders of the preferred stock held by the depositary are entitled to vote, the depositary will mail the information contained in the notice of meeting to the record holders of the depositary shares relating to the preferred stock. Each record holder of depositary shares on the record date, which will be the same date as the record date for the



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preferred stock, will be entitled to instruct the depository as to the exercise of the voting rights pertaining to the amount of preferred stock underlying the holder's depository shares. The depository will endeavor, insofar as practicable, to vote the amount of preferred stock underlying the depository shares in accordance with these instructions. We will agree to take all action which may be deemed necessary by the depository to enable the depository to do so. The depository will not vote any shares of preferred stock except to the extent it receives specific instructions from the holders of depository shares representing that number of shares of preferred stock.

### **Amendment and Termination of the Deposit Agreement**

The form of depository receipt evidencing the depository shares and any provision of the deposit agreement may be amended by agreement between us and the depository. However, any amendment which materially and adversely alters the rights of the existing holders of depository shares will not be effective unless the amendment has been approved by the record holders of at least a majority of the depository shares then outstanding. Either we or the depository may terminate a deposit agreement if all of the outstanding depository shares have been redeemed or if there has been a final distribution in respect of our preferred stock in connection with our liquidation, dissolution, or winding up.

### **Charges of Depository**

We will pay all transfer and other taxes, assessments, and governmental charges arising solely from the existence of the depository arrangements. We will pay the fees of the depository in connection with the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depository receipts will pay transfer and other taxes, assessments, and governmental charges and any other charges as are expressly provided in the deposit agreement to be for their accounts. The depository may refuse to effect any transfer of a depository receipt or any withdrawals of preferred stock evidenced by a depository receipt until all taxes, assessments, and governmental charges with respect to the depository receipt or preferred stock are paid by their holders.

### **Miscellaneous**

The depository will forward to the holders of depository shares all of our reports and communications which are delivered to the depository and which we are required to furnish to the holders of our preferred stock.

Neither we nor the depository will be liable if we are prevented or delayed by law or any circumstance beyond our control in performing our obligations under the deposit agreement. All of our obligations as well as the depository's obligations under the deposit agreement are limited to performance in good faith of our respective duties set forth in the deposit agreement, and neither of us will be obligated to prosecute or defend any legal proceeding relating to any depository shares or preferred stock unless provided with satisfactory indemnity. We, and the depository, may rely upon written advice of counsel or accountants, or information provided by persons presenting preferred stock for deposit, holders of depository shares, or other persons believed to be competent and on documents believed to be genuine.

### **Resignation and Removal of Depository**

The depository may resign at any time by delivering to us notice of its election to do so, and we may remove the depository at any time. Any resignation or removal will take effect only upon the appointment of a successor depository and the successor depository's acceptance of the appointment. Any successor depository must be a U.S. bank or trust company.

## DESCRIPTION OF COMMON STOCK

This section describes the general terms and provisions of the shares of our common stock. We also have filed our Amended and Restated Certificate of Incorporation and our by-laws as exhibits to the registration statement of which this prospectus is a part. You should read our Amended and Restated Certificate of Incorporation and our by-laws for additional information about our common stock.

### General

As of the date of this prospectus, under our Amended and Restated Certificate of Incorporation, we are authorized to issue twelve billion eight hundred million (12,800,000,000) shares of common stock, par value \$.01 per share, of which approximately 10.52 billion shares were outstanding on January 31, 2015. Our common stock trades on the New York Stock Exchange under the symbol "BAC." Our common stock also is listed on the London Stock Exchange, and certain shares are listed on the Tokyo Stock Exchange. As of January 31, 2015, approximately 1.79 billion shares were reserved for issuance in connection with our various employee and director benefit plans, the conversion of outstanding securities convertible into shares of our common stock, and for other purposes. After taking into account the reserved shares, there were approximately 489 million authorized shares of our common stock available for issuance as of January 31, 2015.

Shares of our common stock will be uncertificated unless our board of directors by resolution determines otherwise. Shares represented by an existing certificate will remain certificated until such certificate is surrendered to us.

### Voting and Other Rights

Holders of our common stock are entitled to one vote per share. There are no cumulative voting rights. In general, a majority of votes cast on a matter is sufficient to take action upon routine matters, including the election of directors in an uncontested election. However, (1) amendments to our Amended and Restated Certificate of Incorporation generally must be approved by the affirmative vote of the holders of a majority of the voting power of the outstanding stock, and (2) a merger, dissolution, or the sale of all or substantially all of our assets generally must be approved by the affirmative vote of the holders of a majority of the voting power of the outstanding stock.

In the event of our liquidation, holders of our common stock will be entitled to receive pro rata any assets legally available for distribution to stockholders, subject to any prior rights of any preferred stock then outstanding.

Our common stock does not have any preemptive rights, redemption privileges, sinking fund privileges, or conversion rights. All the outstanding shares of our common stock are, and upon proper conversion of any convertible securities, all of the shares of our common stock into which those securities are converted will be, validly issued, fully paid, and nonassessable.

Computershare Trust Company, N.A. is the transfer agent and registrar for our common stock.

### Dividends

Subject to the preferential rights of any holders of any outstanding series of preferred stock, the holders of our common stock are entitled to receive dividends or distributions, whether payable in cash or otherwise, as our board of directors may declare out of funds legally available for

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payments. Stock dividends, if any are declared, may be paid from our authorized but unissued shares of common stock.

### **Certain Anti-Takeover Matters**

Certain provisions of Delaware law and of our Amended and Restated Certificate of Incorporation and by-laws could make it more difficult for a third party to acquire control of us or have the effect of discouraging a third party from attempting to acquire control of us. For example, we are subject to Section 203 of the Delaware General Corporation Law, which would make it more difficult for another party to acquire us without the approval of our board of directors. Certain provisions of our Amended and Restated Certificate of Incorporation and by-laws may make it less likely that our management would be changed or that someone would acquire voting control of our company without our board's consent. These provisions could make it more difficult for a third party to acquire us even if an acquisition might be in the best interest of our stockholders.

**Preferred Stock.** Our board of directors can, at any time, under our Amended and Restated Certificate of Incorporation and without stockholder approval, issue one or more new series of preferred stock. In some cases, the issuance of preferred stock without stockholder approval could discourage or make more difficult attempts to take control of our company through a merger, tender offer, proxy contest or otherwise. Preferred stock with special voting rights or other features issued to persons favoring our management could stop a takeover by preventing the person trying to take control of our company from acquiring enough voting shares necessary to take control.

**Advance Notice Requirements.** Our by-laws establish advance notice procedures with regard to stockholder proposals relating to nominations for the election of directors or other business to be brought before meetings of our stockholders. These procedures provide that notice of such stockholder proposals must be timely given to our corporate secretary prior to the meeting at which the action is to be taken. The notice must contain certain information specified in the by-laws and must otherwise comply with the by-laws.

**Vacancies.** Under our by-laws, a majority vote of our board of directors may increase or decrease the number of directors. Any director may be removed at any time with or without cause by the affirmative vote of the holders of a majority of the voting power of the outstanding shares then entitled to vote at an election of directors. Any vacancy on our board of directors or newly created directorship will be filled by a majority vote of the remaining directors then in office, and those newly elected directors will serve for a term expiring at the next annual meeting of stockholders, and until such directors' successor has been duly elected and qualified.

**Amendment of By-laws.** Our by-laws may be adopted, amended or repealed by a majority of our board of directors, subject to certain limitations in our by-laws. Our stockholders also have the power to adopt, amend or repeal our by-laws.

## REGISTRATION AND SETTLEMENT

Unless we specify otherwise in the applicable supplement, we will issue the securities in registered, and not bearer, form. This means that our obligation runs to the holder of the security named on the face of the security. Each debt security, warrant, purchase contract, unit, share of preferred stock, and depositary share issued in registered form will be represented either by a certificate issued in definitive form to a particular investor or by one or more global securities representing the entire issuance of securities.

We refer to those persons who have securities registered in their own names, on the books that we or the trustee, warrant agent, or other agent maintain for this purpose, as the “holders” of those securities. These persons are the legal holders of the securities. We refer to those who, indirectly through others, own beneficial interests in securities that are not registered in their own names as indirect owners of those securities. As we discuss below, indirect owners are not legal holders, and investors in securities issued in global, or book-entry, form or in street name will be indirect owners.

### **Book-Entry Only Issuance**

Unless we specify otherwise in the applicable supplement, we will issue each security in global, or book-entry, form. This means that we will not issue certificated securities in definitive form to investors. Instead, we will issue global securities in registered form representing the entire issuance of securities. Each global security will be registered in the name of a financial institution or clearing system that holds the global security as depository on behalf of other financial institutions that participate in that depository’s book-entry system. These participating institutions, in turn, hold beneficial interests in the global securities on behalf of themselves or their customers.

Because securities issued in global form are registered in the name of the depository, we will recognize only the depository as the holder of the securities. This means that we will make all payments on the securities, including deliveries of any property other than cash, to the depository. The depository passes along the payments it receives from us to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depository and its participants are not obligated to pass these payments along under the terms of the securities. Instead, they do so under agreements they have made with one another or with their customers.

As a result, investors will not own securities issued in book-entry form directly. Instead, they will own beneficial interests in a global security, through a bank, broker, or other financial institution that participates in the depository’s book-entry system or holds an interest through a participant in the depository’s book-entry system. As long as the securities are issued in global form, investors will be indirect owners, and not holders, of the securities. The depository will not have knowledge of the actual beneficial owners of the securities.

### **Certificated Securities**

In the future, we may cancel a global security or we may issue securities initially in non-global, or certificated, form. We do not expect to exchange global securities for certificated securities in definitive form registered in the names of the beneficial owners of the global securities representing the securities except in the limited circumstances described in the relevant securities or in the indenture, agreement or other instrument governing the relevant securities.

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### **Street Name Owners**

If we issue certificated securities in definitive form registered in the names of the beneficial owners, investors may choose to hold their securities in their own names or in street name. Securities held by an investor in street name would be registered in the name of a bank, broker, or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account that he or she maintains at that institution.

For securities held in street name, we will recognize only the intermediary banks, brokers, and other financial institutions in whose names the securities are registered as the holders of those securities, and we will make all payments on those securities, including deliveries of any property other than cash, to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect owners, not holders, of those securities.

### **Legal Holders**

Our obligations, as well as the obligations of the trustee under any indenture and the obligations, if any, of any warrant agents, unit agents, depository for depository shares, and any other third parties employed by us, the trustee, or any of those agents, run only to the holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, who hold the securities in street name, or who hold the securities by any other indirect means. This will be the case whether an investor chooses to be an indirect owner of a security or has no choice because we are issuing the securities only in global form. For example, once we make a payment or give a notice to the holder, we have no further responsibility for that payment or notice even if that holder is required, under agreements with depository participants or customers or by law, to pass it along to the indirect owners, but does not do so. Similarly, if we want to obtain the approval of the holders for any purpose, such as to amend the indenture for a series of debt securities or the warrant agreement for a series of warrants or the unit agreement for a series of units or to relieve us of the consequences of a default or of our obligation to comply with a particular provision of an indenture, we would seek the approval only from the holders, and not the indirect owners, of the relevant securities. Whether and how the holders contact the indirect owners is up to the holders.

When we refer to “you” in this prospectus, we mean those who invest in the securities being offered by this prospectus, whether they are the holders or only indirect owners of those securities. When we refer to “your securities” in this prospectus, we mean the securities in which you will hold a direct or indirect interest.

### **Special Considerations for Indirect Owners**

If you hold securities through a bank, broker, or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

- how it handles payments on your securities and notices;
- whether it imposes fees or charges;
- whether and how you can instruct it to exercise any rights to purchase or sell warrant property under a warrant or purchase contract property under a purchase contract or to exchange or convert a security for or into other property;

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- how it would handle a request for the holders' consent, if required;
- whether and how you can instruct it to send you the securities registered in your own name so you can be a holder, if that is permitted in the future;
- how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and
- if the securities are in book-entry form, how the depository's rules and procedures will affect these matters.

### **Depositories for Global Securities**

Each security issued in book-entry form will be represented by a global security that we deposit with and register in the name of one or more financial institutions or clearing systems, or their nominees, which we will select. A financial institution or clearing system that we select for this purpose is called the "depository" for that security. A security usually will have only one depository, but it may have more.

Each series of securities will have one or more of the following as the depositories:

- The Depository Trust Company, New York, New York, which is known as "DTC";
- a financial institution holding the securities on behalf of Euroclear Bank SA/NV, which is known as "Euroclear";
- a financial institution holding the securities on behalf of Clearstream Banking, société anonyme, Luxembourg, which is known as "Clearstream, Luxembourg"; and
- any other clearing system or financial institution that we identify in the applicable supplement.

The depositories named above also may be participants in one another's clearing systems. For example, if DTC is the depository for a global security, investors may hold beneficial interests in that security through Euroclear or Clearstream, Luxembourg as DTC participants.

We will name the depository or depositories for your securities in the applicable supplement. If no depository is named, the depository will be DTC.

#### ***The Depository Trust Company***

The following is based on information furnished to us by DTC:

Unless we specify otherwise in the applicable supplement, DTC will act as securities depository for the securities. The securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or any other name as may be requested by an authorized representative of DTC. One fully-registered security certificate will be issued for each issue of the securities, each in the aggregate principal amount of the issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue

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exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of the issue. We may also issue one or more global securities that represent multiple series of debt securities.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.6 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's direct participants deposit with DTC. DTC also facilitates the post-trade settlement among direct participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between direct participants' accounts. This eliminates the need for physical movement of securities certificates. Direct participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly ("indirect participants"). The DTC rules applicable to its participants are on file with the SEC. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). Information on that website is not included or incorporated by reference herein.

Purchases of the securities under the DTC system must be made by or through direct participants, which will receive a credit for the securities on DTC's records. The ownership interest of each actual purchaser of each security ("beneficial owner") is in turn to be recorded on the direct and indirect participants' records. Beneficial owners will not receive written confirmation from DTC of their purchase. Beneficial owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the direct or indirect participant through which the beneficial owner entered into the transaction. Transfers of ownership interests in the securities are to be accomplished by entries made on the books of direct and indirect participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in the securities, except in the event that use of the book-entry system for the securities is discontinued.

To facilitate subsequent transfers, all securities deposited by direct participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual beneficial owners of the securities; DTC's records reflect only the identity of the direct participants to whose accounts such securities are credited, which may or may not be the beneficial owners. The direct and indirect participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct and indirect participants to beneficial

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owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial owners of securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the securities, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, beneficial owners of securities may wish to ascertain that the nominee holding the securities for its benefit has agreed to obtain and transmit notices to beneficial owners. In the alternative, beneficial owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to securities unless authorized by a direct participant in accordance with DTC's Money Market Instrument ("MMI") procedures. Under its usual procedures, DTC mails an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those direct participants to whose accounts the securities are credited on the record date (identified in a listing attached to the omnibus proxy).

We will make dividend payments or any payments of principal, any premium, interest, or other amounts on the securities in immediately available funds directly to Cede & Co., or any other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit direct participants' accounts upon DTC's receipt of funds and corresponding detail information from us, on the applicable payment date in accordance with their respective holdings shown on DTC's records. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of these participants and not of DTC or its nominee, us, the trustee, or any other agent or party, subject to any statutory or regulatory requirements that may be in effect from time to time. Payment of dividends or principal and any premium or interest to Cede & Co. (or any other nominee as may be requested by an authorized representative of DTC) is our responsibility. Disbursement of the payments to direct participants is the responsibility of DTC, and disbursement of the payments to the beneficial owners is the responsibility of the direct or indirect participants.

We will send any redemption notices to DTC. If less than all of the securities of a series are being redeemed, DTC's practice is to determine by lot the amount of the interest of each direct participant in the issue to be redeemed.

A beneficial owner shall give notice to elect to have its securities repurchased through the participant through which it holds its beneficial interest in the security to the applicable trustee or tender agent. The beneficial owner shall effect delivery of its securities by causing the direct participant to transfer its interest in the securities on DTC's records. The requirement for physical delivery of securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the securities are transferred by the direct participant on DTC's records and followed by a book-entry credit of tendered securities to the applicable trustee or agent's DTC account.

DTC may discontinue providing its services as depository for the securities at any time by giving us reasonable notice. If this occurs, and if a successor securities depository is not obtained, we will print and deliver certificated securities.

We may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, we will print and deliver certificated securities to DTC.



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The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be reliable, but we take no responsibility for its accuracy.

### ***Euroclear and Clearstream, Luxembourg***

Euroclear and Clearstream, Luxembourg each hold securities for their customers and facilitate the clearance and settlement of securities transactions by electronic book-entry transfer between their respective account holders (each such account holder, a "participant" and collectively, the "participants"). Euroclear and Clearstream, Luxembourg provide various services including safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Euroclear and Clearstream, Luxembourg also deal with domestic securities markets in several countries through established depository and custodial relationships. Euroclear and Clearstream, Luxembourg have established an electronic bridge between their two systems across which their respective participants may settle trades with each other. Euroclear is incorporated under the laws of Belgium and Clearstream, Luxembourg is incorporated under the laws of Luxembourg.

Euroclear and Clearstream, Luxembourg customers are world-wide financial institutions, including underwriters, securities brokers and dealers, banks, trust companies, and clearing corporations. Indirect access to Euroclear and Clearstream, Luxembourg is available to other institutions that clear through or maintain a custodial relationship with a participant of either system.

The address of Euroclear is Euroclear Bank SA/NV, 1 Boulevard du Roi Albert II, B-1210 Brussels and the address of Clearstream, Luxembourg is Clearstream Banking, 42 Avenue JF Kennedy, L-1855, Luxembourg.

Euroclear and Clearstream, Luxembourg may be depositories for a global security sold or traded outside the United States. In addition, if DTC is the depository for a global security, Euroclear and Clearstream, Luxembourg may hold interests in the global security as participants in DTC. As long as any global security is held by Euroclear or Clearstream, Luxembourg as depository, you may hold an interest in the global security only through an organization that participates, directly or indirectly, in Euroclear or Clearstream, Luxembourg. If Euroclear or Clearstream, Luxembourg is the depository for a global security and there is no depository in the United States, you will not be able to hold interests in that global security through any securities clearing system in the United States.

Payments, deliveries, transfers, exchanges, notices, and other matters relating to the securities made through Euroclear or Clearstream, Luxembourg must comply with the rules and procedures of those clearing systems. Those clearing systems could change their rules and procedures at any time. We have no control over those clearing systems or their participants, and we take no responsibility for their activities. Transactions between participants in Euroclear or Clearstream, Luxembourg, on one hand, and participants in DTC, on the other hand, when DTC is the depository, also would be subject to DTC's rules and procedures.

Investors will be able to make and receive through Euroclear and Clearstream, Luxembourg payments, deliveries, transfers, exchanges, notices, and other transactions involving any securities held through those clearing systems only on days when those clearing systems are open for business. Those clearing systems may not be open for business on days when banks, brokers, and other institutions are open for business in the United States. In addition, because of time-zone differences, U.S. investors who hold their interests in the

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securities through these clearing systems and wish to transfer their interests, or to receive or make a payment or delivery or exercise any other right with respect to their interests, on a particular day may find that the transaction will not be effected until the next business day in Brussels or Luxembourg, as applicable. Thus, investors who wish to exercise rights that expire on a particular day may need to act before the expiration date. In addition, investors who hold their interests through both DTC and Euroclear or Clearstream, Luxembourg may need to make special arrangements to finance any purchases or sales of their interests between the United States and European clearing systems, and those transactions may settle later than would be the case for transactions within one clearing system.

### **Special Considerations for Global Securities**

As an indirect owner, an investor's rights relating to a global security will be governed by the account rules of the depository and those of the investor's financial institution or other intermediary through which it holds its interest (e.g., Euroclear or Clearstream, Luxembourg, if DTC is the depository), as well as general laws relating to securities transfers. We do not recognize this type of investor or any intermediary as a holder of securities. Instead, we deal only with the depository that holds the global security.

If securities are issued only in the form of a global security, an investor should be aware of the following:

- an investor cannot cause the securities to be registered in his or her own name, and cannot obtain physical certificates for his or her interest in the securities, except in the special situations described above;
- an investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above under “—Legal Holders”;
- under existing industry practices, if we or the applicable trustee request any action of owners of beneficial interests in any global security or if an owner of a beneficial interest in any global security desires to give instructions or take any action that a holder of an interest in a global security is entitled to give or take under the applicable indenture, Euroclear or Clearstream, Luxembourg, as the case may be, would authorize the participants owning the relevant beneficial interests to give instructions or take such action, and such participants would authorize indirect holders to give or take such action or would otherwise act upon the instructions of such indirect holders;
- an investor may not be able to sell interests in the securities to some insurance companies and other institutions that are required by law to own their securities in certificated form;
- an investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective; furthermore, as Euroclear and Clearstream, Luxembourg act on behalf of their respective participants only, who in turn may act on behalf of their respective clients, the ability of beneficial owners who are not participants with Euroclear or Clearstream, Luxembourg to pledge interests in any global security to persons or entities that are not participants with Euroclear or Clearstream, Luxembourg or otherwise take action in respect of interests in any global security, may be limited;

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- the depository's policies will govern payments, deliveries, transfers, exchanges, notices, and other matters relating to an investor's interest in a global security, and those policies may change from time to time;
- we, the trustee, any warrant agents, and any unit or other agents will not be responsible for any aspect of the depository's policies, actions, or records of ownership interests in a global security;
- we, the trustee, any warrant agents, and any unit or other agents do not supervise the depository in any way;
- the depository will require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well; and
- financial institutions that participate in the depository's book-entry system and through which an investor holds its interest in the global securities, directly or indirectly, also may have their own policies affecting payments, deliveries, transfers, exchanges, notices, and other matters relating to the securities. Those policies may change from time to time. For example, if you hold an interest in a global security through Euroclear or Clearstream, Luxembourg when DTC is the depository, Euroclear or Clearstream, Luxembourg, as applicable, will require those who purchase and sell interests in that security through them to use immediately available funds and comply with other policies and procedures, including deadlines for giving instructions as to transactions that are to be effected on a particular day. There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the policies or actions or records of ownership interests of any of those intermediaries.

### **Registration, Transfer, and Payment of Certificated Securities**

If we ever issue certificated securities in definitive form, those securities may be presented for registration of transfer at the office of the registrar or at the office of any transfer agent we designate and maintain. The registrar or transfer agent will make the transfer or registration only if it is satisfied with the documents of title and identity of the person making the request. There will not be a service charge for any exchange or registration of transfer of the securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the exchange. At any time we may change transfer agents or approve a change in the location through which any transfer agent acts. We also may designate additional transfer agents for any securities at any time.

We will not be required to issue, exchange, or register the transfer of any security to be redeemed for a period of 15 calendar days before the selection of the securities to be redeemed. In addition, we will not be required to exchange or register the transfer of any security that was selected, called, or is being called for redemption, except the unredeemed portion of any security being redeemed in part.

We will pay amounts payable on any certificated securities in definitive form at the offices of the paying agents we may designate from time to time.

## U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following summary of the material U.S. federal income tax considerations of the acquisition, ownership, and disposition of certain of the debt securities, preferred stock, depository shares representing fractional interests in preferred stock, and common stock that we are offering, is based upon the advice of Morrison & Foerster LLP, our tax counsel. The following discussion is not exhaustive of all possible tax considerations. This summary is based upon the Internal Revenue Code of 1986, as amended (the "Code"), regulations promulgated under the Code by the U.S. Treasury Department ("Treasury") (including proposed and temporary regulations), rulings, current administrative interpretations and official pronouncements of the Internal Revenue Service (the "IRS"), and judicial decisions, all as currently in effect and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below.

This summary is for general information only, and does not purport to discuss all aspects of U.S. federal income taxation that may be important to a particular holder in light of its investment or tax circumstances or to holders subject to special tax rules, such as: partnerships, subchapter S corporations, or other pass-through entities, any government (or instrumentality or agency thereof), banks, financial institutions, tax-exempt entities, insurance companies, regulated investment companies, real estate investment trusts, trusts and estates, dealers in securities or currencies, traders in securities that have elected to use the mark-to-market method of accounting for their securities, persons holding the debt securities, preferred stock, depository shares, or common stock as part of an integrated investment, including a "straddle," "hedge," "constructive sale," or "conversion transaction," persons (other than Non-U.S. Holders) whose functional currency for tax purposes is not the U.S. dollar, and persons subject to the alternative minimum tax provisions of the Code. This summary does not include any description of the tax laws of any state or local governments, or of any foreign government, that may be applicable to a particular holder. This summary also may not apply to all forms of debt securities, preferred stock, depository shares, or common stock that we may issue. If the tax consequences associated with a particular form of debt security, preferred stock, depository shares or common stock are different than those described below, they will be described in the applicable supplement.

This summary is directed solely to holders that, except as otherwise specifically noted, will purchase the debt securities, preferred stock, depository shares, or common stock offered in this prospectus upon original issuance and will hold such securities as capital assets within the meaning of Section 1221 of the Code, which generally means as property held for investment.

*You should consult your own tax advisor concerning the U.S. federal income tax consequences to you of acquiring, owning, and disposing of these securities, as well as any tax consequences arising under the laws of any state, local, foreign, or other tax jurisdiction and the possible effects of changes in U.S. federal or other tax laws.*

As used in this prospectus, the term "U.S. Holder" means a beneficial owner of the debt securities, preferred stock, depository shares, or common stock offered in this prospectus that is for U.S. federal income tax purposes:

- a citizen or resident of the United States;
- a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of any state of the United States or the District of Columbia;

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- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust.

Notwithstanding the preceding paragraph, to the extent provided in Treasury regulations, some trusts in existence on August 20, 1996, and treated as United States persons prior to that date, that elect to continue to be treated as United States persons also will be U.S. Holders. As used in this prospectus, the term “Non-U.S. Holder” is a holder that is not a U.S. Holder.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds the debt securities, preferred stock, depository shares, or common stock offered in this prospectus, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership and accordingly, this summary does not apply to partnerships. A partner of a partnership holding the debt securities, preferred stock, depository shares, or common stock should consult its own tax advisor regarding the U.S. federal income tax consequences to the partner of the acquisition, ownership, and disposition by the partnership of the debt securities, preferred stock, depository shares, or common stock.

### **Taxation of Debt Securities**

This subsection describes the material U.S. federal income tax consequences of the acquisition, ownership, and disposition of the debt securities offered in this prospectus, other than the debt securities described below under “—Convertible, Renewable, Extendible, Indexed, and Other Debt Securities,” which will be described in the applicable supplement. This subsection is directed solely to holders that, except as otherwise specifically noted, will purchase the debt securities offered in this prospectus upon original issuance at the issue price, as defined below.

#### ***Consequences to U.S. Holders***

The following is a summary of the material U.S. federal income tax consequences that will apply to U.S. Holders of debt securities.

*Payment of Interest.* Except as described below in the case of interest on a debt security issued with original issue discount, as defined below under “—Consequences to U.S. Holders—Original Issue Discount,” interest on a debt security generally will be included in the income of a U.S. Holder as interest income at the time it is accrued or is received in accordance with the U.S. Holder’s regular method of accounting for U.S. federal income tax purposes and will be ordinary income.

*Original Issue Discount.* Some of our debt securities may be issued with original issue discount (“OID”). U.S. Holders of debt securities issued with OID, other than short-term debt securities with a maturity of one year or less from its date of issue, will be subject to special tax accounting rules, as described in greater detail below. For tax purposes, OID is the excess of the “stated redemption price at maturity” of a debt instrument over its “issue price.” The “stated redemption price at maturity” of a debt security is the sum of all payments required to be made on the debt security other than “qualified stated interest” payments, as defined below. The “issue price” of a debt security is generally the first offering price to the public at which a substantial amount of the issue was sold (ignoring sales to bond houses, brokers, or similar persons or organizations acting in the

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capacity of underwriters, placement agents, or wholesalers). The term “qualified stated interest” generally means stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer), or that is treated as constructively received, at least annually at a single fixed rate or, under certain circumstances, at a variable rate. If a debt security bears interest during any accrual period at a rate below the rate applicable for the remaining term of the debt security (for example, debt securities with teaser rates or interest holidays), then some or all of the stated interest may not be treated as qualified stated interest.

A U.S. Holder of a debt security with a maturity of more than one year from its date of issue that has been issued with OID (an “OID debt security”) is generally required to include any qualified stated interest payments in income as interest at the time such interest is accrued or is received in accordance with the U.S. Holder’s regular accounting method for tax purposes, as described above under “—Consequences to U.S. Holders—Payment of Interest.” A U.S. Holder of an OID debt security is generally required to include in income the sum of the daily accruals of the OID for the debt security for each day during the taxable year (or portion of the taxable year) in which the U.S. Holder held the OID debt security, regardless of such holder’s regular method of accounting. Thus, a U.S. Holder may be required to include OID in income in advance of the receipt of some or all of the related cash payments. The daily portion is determined by allocating the OID for each day of the accrual period. An accrual period may be of any length and the accrual periods may even vary in length over the term of the OID debt security, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs either on the first day of an accrual period or on the final day of an accrual period. The amount of OID allocable to an accrual period is equal to the excess of: (1) the product of the “adjusted issue price” of the OID debt security at the beginning of the accrual period and its yield to maturity (computed generally on a constant yield method and compounded at the end of each accrual period, taking into account the length of the particular accrual period) over (2) the amount of any qualified stated interest allocable to the accrual period. OID allocable to a final accrual period is the difference between the amount payable at maturity, other than a payment of qualified stated interest, and the adjusted issue price at the beginning of the final accrual period. Special rules will apply for calculating OID for an initial short accrual period. The “adjusted issue price” of an OID debt security at the beginning of any accrual period is the sum of the issue price of the OID debt security plus the amount of OID allocable to all prior accrual periods reduced by any payments received on the OID debt security that were not qualified stated interest. Under these rules, a U.S. Holder generally will have to include in income increasingly greater amounts of OID in successive accrual periods.

If the excess of the “stated redemption price at maturity” of a debt security over its “issue price” is less than 1/4 of 1% of the debt instrument’s stated redemption price at maturity multiplied by the number of complete years from its issue date to its maturity, or weighted average maturity in the case of debt securities with more than one principal payment (“de minimis OID”), the debt security is not treated as issued with OID. A U.S. Holder generally must include the de minimis OID in income at the time payments, other than qualified stated interest, on the debt securities are made in proportion to the amount paid (unless the U.S. Holder makes the election described below under “—Consequences to U.S. Holders—Election to Treat All Interest as Original Issue Discount”). Any amount of de minimis OID that is included in income in this manner will be treated as capital gain.

Additional rules applicable to debt securities with OID that are denominated in or determined by reference to a currency other than the U.S. dollar are described under “—Consequences to U.S. Holders—Non-U.S. Dollar Denominated Debt Securities” below.

*Variable Rate Debt Securities.* In the case of a debt security that is a variable rate debt security, special rules apply. A debt security will qualify as a “variable rate debt instrument” under

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Treasury regulations if (i) the debt security's issue price does not exceed the total noncontingent principal payments by more than the lesser of: (a) 0.015 multiplied by the product of the total noncontingent principal payments and the number of complete years to maturity from the issue date, or (b) 15% of the total noncontingent principal payments; and (ii) the debt security provides for stated interest, compounded or paid at least annually, only at one or more qualified floating rates, a single fixed rate and one or more qualified floating rates, a single objective rate, or a single fixed rate and a single objective rate that is a qualified inverse floating rate.

Generally, a rate is a qualified floating rate if: (i) (a) variations in the value of the rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the debt security is denominated; or (b) the rate is equal to such a rate multiplied by either a fixed multiple that is greater than 0.65 but not more than 1.35 or a fixed multiple greater than 0.65 but not more than 1.35 increased or decreased by a fixed rate, and (ii) the value of the rate on any date during the term of the debt security is set no earlier than three months prior to the first day on which that value is in effect and no later than one year following that first day. If a debt security provides for two or more qualified floating rates that are within 0.25 percentage points of each other on the issue date or can reasonably be expected to have approximately the same values throughout the term of the debt security, the qualified floating rates together constitute a single qualified floating rate. A debt security will not have a variable rate that is a qualified floating rate, however, if the variable rate of interest is subject to one or more minimum or maximum rate floors or ceilings or one or more governors limiting the amount of increase or decrease unless such floor, ceiling, or governor is fixed throughout the term of the debt security or is not reasonably expected as of the issue date to significantly affect the yield on the debt security.

Generally, an objective rate is a rate that is (i) not a qualified floating rate, (ii) is determined using a single fixed formula that is based on objective financial or economic information that is not within the control of the issuer or a related party, and (iii) the value of the rate on any date during the term of the debt security is set no earlier than three months prior to the first day on which that value is in effect and no later than one year following that first day. If it is reasonably expected that the average value of the variable rate during the first half of the term of a debt security will be either significantly less than or significantly greater than the average value of the rate during the final half of the term of the debt security, then the debt security will not have a variable rate that is an objective rate. An objective rate is a qualified inverse floating rate if that rate is equal to a fixed rate minus a qualified floating rate and variations in the rate can reasonably be expected to inversely reflect contemporaneous variations in the qualified floating rate.

A debt security will also have a variable rate that is a single qualified floating rate or an objective rate if interest on the debt security is stated at a fixed rate for an initial period of one year or less followed by either a qualified floating rate or an objective rate for a subsequent period, and either: (i) the fixed rate and the qualified floating rate or objective rate have values on the issue date of the debt security that do not differ by more than 0.25 percentage points, or (ii) the value of the qualified floating rate or objective rate is intended to approximate the fixed rate.

In the case of a debt security that provides for stated interest that is unconditionally payable at least annually at a variable rate that is a single qualified floating rate or objective rate, or one of those rates after a single fixed rate for an initial period, all stated interest on the debt security is treated as qualified stated interest. In that case, both the debt security's yield to maturity and qualified stated interest will be determined, solely for purposes of calculating the accrual of OID, if any, as though the debt security will bear interest in all periods throughout its term (in the case of a single qualified floating rate or qualified inverse floating rate) at a fixed rate generally equal to the value of the rate on the issue date or, in the case of an objective rate (other than a qualified

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inverse floating rate), the rate that reflects the yield to maturity that is reasonably expected for the debt security (the “fixed rate substitute”). A U.S. holder should then recognize OID, if any, that is calculated based on the debt security’s assumed yield to maturity. If the interest actually accrued or paid during an accrual period exceeds or is less than the assumed fixed interest, the qualified stated interest allocable to that period is increased or decreased, as applicable.

If a debt security does not provide for stated interest at a single qualified floating rate or a single objective rate, and also does not provide for interest payable at a fixed rate other than a single fixed rate for an initial period, the interest and OID accruals on the debt security must be determined by (i) determining a fixed rate substitute for each variable rate provided under the debt security (as described above), (ii) constructing the equivalent fixed rate debt instrument, using the fixed rate substitutes, (iii) determining the amount of qualified stated interest and OID with respect to the equivalent fixed rate debt instrument, and (iv) making appropriate adjustments to qualified stated interest or OID for actual variable rates during the applicable accrual period.

In the case of a debt security that provides for stated interest either at one or more qualified floating rates or at a qualified inverse floating rate and also provides for stated interest at a single fixed rate other than at a single fixed rate for an initial period (as described above), the interest and OID accruals on the debt security must be determined by using the method described above. However, the debt security will be treated, for purposes of the first three steps of the determination, as if the debt security had provided for a qualified floating rate, or a qualified inverse floating rate, rather than the fixed rate. The qualified floating rate, or qualified inverse floating rate, that replaces the fixed rate must be such that the fair market value of the debt security as of the issue date approximates the fair market value of an otherwise identical debt instrument that provides for the qualified floating rate, or qualified inverse floating rate, rather than the fixed rate.

*Acquisition Premium.* If a U.S. Holder purchases an OID debt security for an amount greater than its adjusted issue price (as determined above) at the purchase date and less than or equal to the sum of all amounts, other than qualified stated interest, payable on the OID debt security after the purchase date, the excess is “acquisition premium.” Under these rules, in general, the amount of OID which must be included in income for the debt security for any taxable year (or any portion of a taxable year in which the debt security is held) will be reduced (but not below zero) by the portion of the acquisition premium allocated to the period. The amount of acquisition premium allocated to each period is determined by multiplying the OID that otherwise would have been included in income by a fraction, the numerator of which is the excess of the cost over the adjusted issue price of the OID debt security and the denominator of which is the excess of the OID debt security’s stated redemption price at maturity over its adjusted issue price.

If a U.S. Holder purchases an OID debt security for an amount less than its adjusted issue price (as determined above) at the purchase date, any OID accruing with respect to that OID debt security will be required to be included in income and, to the extent of the difference between the purchase amount and the OID debt security’s adjusted issue price, the OID debt security will be treated as having “market discount.” See “—Consequences to U.S. Holders— Market Discount” below.

*Amortizable Bond Premium.* If a U.S. Holder purchases a debt security (including an OID debt security) for an amount in excess of the sum of all amounts payable on the debt security after the purchase date, other than qualified stated interest, such holder will be considered to have purchased such debt security with “amortizable bond premium” equal in amount to such excess. A U.S. Holder may elect to amortize such premium as an offset to interest income using a constant yield method over the remaining term of the debt security based on the U.S. Holder’s yield to maturity with respect to the debt security.



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A U.S. Holder generally may use the amortizable bond premium allocable to an accrual period to offset interest required to be included in the U.S. Holder's income under its regular method of accounting with respect to the debt security in that accrual period. If the amortizable bond premium allocable to an accrual period exceeds the amount of interest allocable to such accrual period, such excess would be allowed as a deduction for such accrual period, but only to the extent of the U.S. Holder's prior interest inclusions on the debt security that have not been offset previously by bond premium. Any excess is generally carried forward and allocable to the next accrual period.

If a debt security may be redeemed by us prior to its maturity date, the amount of amortizable bond premium will be based on the amount payable at the applicable redemption date, but only if use of the redemption date (in lieu of the stated maturity date) results in a smaller amortizable bond premium for the period ending on the redemption date. In addition, special rules limit the amortization of bond premium in the case of convertible debt securities.

An election to amortize bond premium applies to all taxable debt obligations held by the U.S. Holder at the beginning of the first taxable year to which the election applies and thereafter acquired by the U.S. Holder and may be revoked only with the consent of the IRS. Generally, a holder may make an election to include in income its entire return on a debt security (i.e., the excess of all remaining payments to be received on the debt security over the amount paid for the debt security by such holder) in accordance with a constant yield method based on the compounding of interest, as discussed below under “—Consequences to U.S. Holders—Election to Treat All Interest as Original Issue Discount.” If a holder makes such an election for a debt security with amortizable bond premium, such election will result in a deemed election to amortize bond premium for all of the holder's debt instruments with amortizable bond premium and may be revoked only with the permission of the IRS.

A U.S. Holder that elects to amortize bond premium will be required to reduce its tax basis in the debt security by the amount of the premium amortized during its holding period. OID debt securities purchased at a premium will not be subject to the OID rules described above. If a U.S. Holder does not elect to amortize bond premium, the amount of bond premium will be included in its tax basis in the debt security. Therefore, if a U.S. Holder does not elect to amortize bond premium and it holds the debt security to maturity, the premium generally will be treated as capital loss when the debt security matures.

*Market Discount.* If a U.S. Holder purchases a debt security for an amount that is less than its stated redemption price at maturity, or, in the case of an OID debt security, its adjusted issue price, such holder will be considered to have purchased the debt security with “market discount.” Any payment, other than qualified stated interest, or any gain on the sale, exchange, retirement, or other disposition of a debt security with market discount generally will be treated as ordinary interest income to the extent of the market discount not previously included in income that accrued on the debt security during such holder's holding period. In general, market discount is treated as accruing on a straight-line basis over the term of the debt security unless an election is made to accrue the market discount under a constant yield method. In addition, a U.S. Holder may be required to defer, until the maturity of the debt security or its earlier disposition in a taxable transaction, the deduction of a portion of the interest paid on any indebtedness incurred or maintained to purchase or carry the debt security in an amount not exceeding the accrued market discount on the debt security.

A U.S. Holder may elect to include market discount in income currently as it accrues (on either a straight-line or constant yield basis), in lieu of treating a portion of any gain realized on a sale, exchange, retirement, or other disposition of the debt security as ordinary income. If an election is

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made to include market discount on a current basis, the interest deduction deferral rule described above will not apply. If a U.S. Holder makes such an election, it will apply to all market discount debt instruments acquired by such holder on or after the first day of the first taxable year to which the election applies. The election may not be revoked without the consent of the IRS. U.S. Holders should consult with their own tax advisors before making this election.

If the difference between the stated redemption price at maturity of a debt security or, in the case of an OID debt security, its adjusted issue price, and the amount paid for the debt security is less than 1/4 of 1% of the debt instrument's stated redemption price at maturity or, in the case of an OID debt security, its adjusted issue price, multiplied by the number of remaining complete years to the debt security's maturity ("de minimis market discount"), the debt security is not treated as issued with market discount.

Generally, a holder may make an election to include in income its entire return on a debt security (i.e., the excess of all remaining payments to be received on the debt security over the amount paid for the debt security by such holder) in accordance with a constant yield method based on the compounding of interest, as discussed below under "—Consequences to U.S. Holders—Election to Treat All Interest as Original Issue Discount." If a holder makes such an election for a debt security with market discount, the holder will be required to include market discount in income currently as it accrues on a constant yield basis for all market discount debt instruments acquired by such holder on or after the first day of the first taxable year to which the election applies, and such election may be revoked only with the permission of the IRS.

*Election to Treat All Interest as Original Issue Discount.* A U.S. Holder may elect to include in income all interest that accrues on a debt security using the constant-yield method applicable to OID described above, subject to certain limitations and exceptions. For purposes of this election, interest includes stated interest, acquisition discount, OID, de minimis OID, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium, each as described herein. If this election is made for a debt security, then, to apply the constant-yield method: (i) the issue price of the debt security will equal its cost, (ii) the issue date of the debt security will be the date it was acquired, and (iii) no payments on the debt security will be treated as payments of qualified stated interest. A U.S. Holder must make this election for the taxable year in which the debt security was acquired, and may not revoke the election without the consent of the IRS. U.S. Holders should consult with their own tax advisors before making this election.

*Debt Securities That Trade "Flat."* We expect that certain debt securities will trade in the secondary market with accrued interest. However, we may issue debt securities with terms and conditions that would make it likely that such debt securities would trade "flat" in the secondary market, which means that upon a sale of a debt security a U.S. Holder would not be paid an amount that reflects the accrued but unpaid interest with respect to such debt security. Nevertheless, for U.S. federal income tax purposes, a portion of the sales proceeds equal to the interest accrued with respect to such debt security from the last interest payment date to the sale date must be treated as interest income rather than as an amount realized upon the sale. Accordingly, a U.S. Holder that sells such a debt security between interest payment dates would be required to recognize interest income and, in certain circumstances, would recognize a capital loss (the deductibility of which is subject to limitations) on the sale of the debt security. Concurrently, a U.S. Holder that purchases such a debt security between interest payment dates would not be required to include in income that portion of any interest payment received that is attributable to interest that accrued prior to the purchase. Such payment is treated as a return of capital which reduces the U.S. Holder's remaining cost basis in the debt security. However, interest that accrues after the purchase date is included in income in the year received or accrued (depending on the U.S. Holder's accounting method). U.S. Holders that purchase such debt securities between interest

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payment dates should consult their own tax advisors concerning such holder's adjusted tax basis in the debt security and whether such debt securities should be treated as having been purchased with market discount, as described above.

*Short-Term Debt Securities.* Some of our debt securities may be issued with maturities of one year or less from the date of issue, which we refer to as short-term debt securities. Treasury regulations provide that no payments of interest on a short-term debt security are treated as qualified stated interest. Accordingly, in determining the amount of discount on a short-term debt security, all interest payments, including stated interest, are included in the short-term debt security's stated redemption price at maturity.

In general, individual and certain other U.S. Holders using the cash basis method of tax accounting are not required to include accrued discount on short-term debt securities in income currently unless they elect to do so, but they may be required to include any stated interest in income as the interest is received. However, a cash basis U.S. Holder will be required to treat any gain realized on a sale, exchange, or retirement of the short-term debt security as ordinary income to the extent such gain does not exceed the discount accrued with respect to the short-term debt security, which will be determined on a straight-line basis unless the holder makes an election to accrue the discount under the constant-yield method, through the date of sale or retirement. In addition, a cash basis U.S. Holder that does not elect to currently include accrued discount in income will not be allowed to deduct any of the interest paid or accrued on any indebtedness incurred or maintained to purchase or carry a short-term debt security (in an amount not exceeding the deferred income), but instead will be required to defer deductions for such interest until the deferred income is realized upon the maturity of the short-term debt security or its earlier disposition in a taxable transaction. Notwithstanding the foregoing, a cash-basis U.S. Holder of a short-term debt security may elect to include accrued discount in income on a current basis. If this election is made, the limitation on the deductibility of interest described above will not apply.

A U.S. Holder using the accrual method of tax accounting and some cash basis holders (including banks, securities dealers, regulated investment companies, and certain trust funds) generally will be required to include accrued discount on a short-term debt security in income on a current basis, on either a straight-line basis or, at the election of the holder, under the constant-yield method based on daily compounding.

Regardless of whether a U.S. Holder is a cash-basis or accrual-basis holder, the holder of a short-term debt security may elect to include accrued "acquisition discount" with respect to the short-term debt security in income on a current basis. Acquisition discount is the excess of the remaining redemption amount of the short-term debt security at the time of acquisition over the purchase price. Acquisition discount will be treated as accruing on a straight-line basis or, at the election of the holder, under a constant yield method based on daily compounding. If a U.S. Holder elects to include accrued acquisition discount in income, the rules for including OID will not apply. In addition, the market discount rules described above will not apply to short-term debt securities.

*Sale, Exchange, or Retirement of Debt Securities.* Upon the sale, exchange, retirement, or other disposition of a debt security, a U.S. Holder will recognize gain or loss equal to the difference between the amount realized upon the sale, exchange, retirement, or other disposition (less an amount equal to any accrued interest not previously included in income if the debt security is disposed of between interest payment dates, which will be included in income as interest income for U.S. federal income tax purposes) and the U.S. Holder's adjusted tax basis in the debt security. The amount realized by the U.S. Holder will include the amount of any cash and the fair market value of any other property received for the debt security. A U.S. Holder's adjusted tax basis in a debt security generally will be the cost of the debt security to such U.S. Holder, increased by any OID, market discount, de minimis OID, de minimis market discount, or any discount with respect to a

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short-term debt security previously included in income with respect to the debt security, and decreased by the amount of any premium previously amortized to reduce interest on the debt security and the amount of any payment (other than a payment of qualified stated interest) received in respect of the debt security.

Except as discussed above with respect to market discount, or as described below with respect to debt securities subject to contingencies and Non-U.S. Dollar Denominated Debt Securities, gain or loss realized on the sale, exchange, retirement, or other disposition of a debt security generally will be capital gain or loss and will be long-term capital gain or loss if the debt security has been held for more than one year. Net long-term capital gain recognized by an individual U.S. Holder is generally taxed at preferential rates. The ability of U.S. Holders to deduct capital losses is subject to limitations under the Code.

*Reopenings.* Treasury regulations provide specific rules regarding whether additional debt instruments issued in a reopening will be considered part of the same issue, with the same issue price and yield to maturity, as the original debt instruments for U.S. federal income tax purposes. Except as provided otherwise in an applicable supplement, we expect that additional debt securities issued by us in any reopening will be issued such that they will be considered part of the original issuance to which they relate.

*Debt Securities Subject to Contingencies.* Certain of the debt securities may provide for an alternative payment schedule or schedules applicable upon the occurrence of a contingency or contingencies, other than a remote or incidental contingency, whether such contingency relates to payments of interest or of principal. In addition, certain of the debt securities may contain provisions permitting them to be redeemed prior to their stated maturity at our option and/or at the option of the holder. Debt securities containing these features may be characterized as “contingent payment debt instruments” for U.S. federal income tax purposes.

If the debt securities are properly characterized as contingent payment debt instruments for U.S. federal income tax purposes, such debt securities generally will be subject to Treasury regulations governing contingent payment debt instruments. Under those regulations, a U.S. Holder will be required to report OID or interest income based on a “comparable yield” and a “projected payment schedule,” both as described below, established by us for determining interest accruals and adjustments with respect to a note. A U.S. Holder which does not use the “comparable yield” and follow the “projected payment schedule” to calculate its OID and interest income on a debt security must timely disclose and justify the use of other estimates to the IRS.

A “comparable yield” with respect to a debt security generally is the yield at which we could issue a fixed-rate debt instrument with terms similar to those of the debt security (taking into account for this purpose the level of subordination, term, timing of payments, and general market conditions, but ignoring any adjustments for liquidity or the riskiness of the contingencies with respect to the debt security). Notwithstanding the foregoing, a comparable yield must not be less than the applicable U.S. federal rate based on the overall maturity of the debt security.

A “projected payment schedule” with respect to a debt security generally is a series of projected payments, the amount and timing of which would produce a yield to maturity on that debt security equal to the comparable yield. This projected payment schedule will consist of a projection for tax purposes of each non-contingent and contingent payment.

Based on the comparable yield and the projected payment schedule of the debt securities, a U.S. Holder of a note (regardless of accounting method) generally will be required to accrue as OID the sum of the daily portions of interest on the debt security for each day in the taxable year on

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which the holder held the debt security, adjusted upward or downward to reflect the difference, if any, between the actual and projected amount of any contingent payments on the debt security, as set forth below. The daily portions of interest for a debt security are determined by allocating to each day in an accrual period the ratable portion of interest on the debt security that accrues in the accrual period. The amount of interest on the debt security that accrues in an accrual period is the product of the comparable yield on the debt security (adjusted to reflect the length of the accrual period) and the adjusted issue price of the debt security at the beginning of the accrual period. The adjusted issue price of a debt security at the beginning of the first accrual period will equal its issue price (as described above). For any subsequent accrual period, the adjusted issue price will be (i) the sum of the issue price of the debt security and any interest previously accrued on the debt security by a holder (without regard to any positive or negative adjustments, described below) minus (ii) the amount of any projected payments on the debt security for previous accrual periods.

A U.S. Holder of a debt security generally will be required to include in income OID in excess of actual cash payments received for certain taxable years. A U.S. Holder will be required to recognize interest income equal to the amount of any positive adjustment for a debt security for the taxable year in which a contingent payment is paid (including a payment of interest at maturity). A positive adjustment is the excess of actual payments in respect of contingent payments over the projected amount of contingent payments. A U.S. Holder also will be required to account for any "negative adjustment" for a taxable year in which a contingent payment is paid. A negative adjustment is the excess of the projected amounts of contingent payments over actual payments in respect of the contingent payments. A net negative adjustment is the amount by which total negative adjustments in a taxable year exceed total positive adjustments in such taxable year. A net negative adjustment (i) will first reduce the amount of interest for the debt security that a U.S. Holder would otherwise be required to include in income in the taxable year, and (ii) to the extent of any excess, will result in an ordinary loss equal to that portion of the excess as does not exceed the excess of (a) the amount of all previous interest inclusions under the debt security over (b) the total amount of the U.S. Holder's net negative adjustments treated as ordinary loss on the note in prior taxable years. A net negative adjustment is not subject to the 2% floor limitation imposed on miscellaneous deductions under Section 67 of the Code. Any net negative adjustment in excess of the amounts described above in (i) and (ii) will be carried forward to offset future interest income on the debt security or to reduce the amount realized on a sale, exchange, retirement or other disposition of the debt security and, in the case of a payment at maturity, should result in a capital loss. The deductibility of capital losses by a U.S. Holder is subject to limitations.

If a contingent payment becomes fixed (within the meaning of applicable Treasury regulations) more than six months before its due date, a positive or negative adjustment, as appropriate, is made to reflect the difference between the present value of the amount that is fixed and the present value of the projected amount. The present value of each amount is determined by discounting the amount from the date the payment is due to the date the payment becomes fixed, using a discount rate equal to the comparable yield. If all contingent payments on the debt security become fixed, substantially contemporaneously, applicable Treasury regulations provide that, with regard to contingent payments that become fixed on a day that is more than six months before their due date, U.S. Holders should take into account positive or negative adjustments in respect of such contingent payments over the period to which they relate in a reasonable manner. U.S. Holders should consult their tax advisors as to what would be a "reasonable manner" in their particular situation.

We expect that the applicable pricing supplement will include a table that sets forth the following information with respect to the principal amount of the debt securities for each of the applicable accrual periods through the maturity date of the debt securities: (i) the amount of interest deemed to have accrued during the accrual period, and (ii) the total amount of interest

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deemed to have accrued from the original issue date through the end of the accrual period. The table will be based upon a projected payment schedule and a comparable yield. The comparable yield will be determined based upon market conditions as of the date of the applicable pricing supplement. The comparable yield is likely to change between the date of any preliminary pricing supplement and the date of the related final pricing supplement. Therefore, the projected payment schedule included in any preliminary pricing supplement will be subject to change. We will determine the actual projected payment schedule and the actual comparable yield on the pricing date. Any tax accrual table included in a preliminary pricing supplement will be revised, and the revised table will be set forth in the final pricing supplement prepared in connection with the initial sale of the debt securities.

Upon a sale, exchange, retirement, or other disposition of a debt security prior to maturity, a U.S. Holder generally will recognize taxable gain or loss equal to the difference between the amount realized on the sale, exchange, retirement, or other disposition and that holder's tax basis in the debt security. A U.S. Holder's tax basis in a debt security generally will equal the cost of that debt security, increased by the amount of OID previously accrued by the holder for that debt security (without regard to any positive or negative adjustments) and reduced by any projected payments for previous periods on the debt securities. A U.S. Holder generally will treat any gain as interest income, and will treat any loss as ordinary loss to the extent of the excess of previous interest inclusions over the total negative adjustments previously taken into account as ordinary losses, and the balance as long-term or short-term capital loss depending upon the U.S. Holder's holding period for the debt security. The deductibility of capital losses by a U.S. Holder is subject to limitations.

U.S. Holders considering the purchase of debt securities with these features should carefully examine the applicable pricing supplement and should consult their own tax advisors regarding the U.S. federal income tax consequences to a U.S. Holder of the purchase, ownership and disposition of such debt securities.

*Non-U.S. Dollar Denominated Debt Securities.* Additional considerations apply to a U.S. Holder of a debt security payable in a currency other than U.S. dollars ("foreign currency").

We refer to these securities as Non-U.S. Dollar Denominated Debt Securities. In the case of payments of interest, U.S. Holders using the cash method of accounting for U.S. federal income tax purposes will be required to include in income the U.S. dollar value of the foreign currency payment on a Non-U.S. Dollar Denominated Debt Security (other than OID or market discount) when the payment of interest is received. The U.S. dollar value of the foreign currency payment is determined by translating the foreign currency received at the spot rate for such foreign currency on the date the payment is received, regardless of whether the payment is in fact converted to U.S. dollars at that time. The U.S. dollar value will be the U.S. Holder's tax basis in the foreign currency received. A U.S. Holder will not recognize foreign currency exchange gain or loss with respect to the receipt of such payment.

U.S. Holders using the accrual method of accounting for U.S. federal income tax purposes will be required to include in income the U.S. dollar value of the amount of interest income that has accrued and is otherwise required to be taken into account with respect to a Non-U.S. Dollar Denominated Debt Security during an accrual period. The U.S. dollar value of the accrued income will be determined by translating the income at the average rate of exchange for the accrual period or, with respect to an accrual period that spans two taxable years, at the average rate for the partial period within the taxable year. A U.S. Holder may elect, however, to translate the accrued interest income using the exchange rate on the last day of the accrual period or, with respect to an accrual period that spans two taxable years, using the exchange rate on the last day of the taxable

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year. If the last day of an accrual period is within five business days of the date of receipt of the accrued interest, a U.S. Holder may translate the interest using the exchange rate on the date of receipt. The above election will apply to all other debt obligations held by the U.S. Holder and may not be changed without the consent of the IRS. U.S. Holders should consult their own tax advisors before making the above election. Upon receipt of an interest payment (including, upon the sale of the debt security, the receipt of proceeds which include amounts attributable to accrued interest previously included in income), the holder will recognize foreign currency exchange gain or loss in an amount equal to the difference between the U.S. dollar value of such payment (determined by translating the foreign currency received at the spot rate for such foreign currency on the date such payment is received) and the U.S. dollar value of the interest income previously included in income with respect to such payment. This gain or loss will be treated as ordinary income or loss.

OID on a debt security that is also a Non-U.S. Dollar Denominated Debt Security will be determined for any accrual period in the applicable foreign currency and then translated into U.S. dollars, in the same manner as interest income accrued by a holder on the accrual basis, as described above (regardless of such holder's regular method of accounting). A U.S. Holder will recognize foreign currency exchange gain or loss when OID is paid (including, upon the sale of such debt security, the receipt of proceeds which include amounts attributable to OID previously included in income) to the extent of the difference between the U.S. dollar value of such payment (determined by translating the foreign currency received at the spot rate for such foreign currency on the date such payment is received) and the U.S. dollar value of the accrued OID (determined in the same manner as for accrued interest). For these purposes, all receipts on a debt security will be viewed: (i) first, as the receipt of any stated interest payment called for under the terms of the debt security, (ii) second, as receipts of previously accrued OID (to the extent thereof), with payments considered made for the earliest accrual periods first, and (iii) third, as the receipt of principal.

The amount of market discount on Non-U.S. Dollar Denominated Debt Securities includible in income generally will be determined by translating the market discount determined in the foreign currency into U.S. dollars at the spot rate on the date the Non-U.S. Dollar Denominated Debt Security is retired or otherwise disposed of. If a U.S. Holder elected to accrue market discount currently, then the amount which accrues is determined in the foreign currency and then translated into U.S. dollars on the basis of the average exchange rate in effect during such accrual period. A U.S. Holder will recognize foreign currency exchange gain or loss with respect to market discount which is accrued currently using the approach applicable to the accrual of interest income as described above.

Amortizable bond premium on a Non-U.S. Dollar Denominated Debt Security will be computed in the applicable foreign currency. If a U.S. Holder elected to amortize the premium, the amortizable bond premium will reduce interest income in the applicable foreign currency. At the time bond premium is amortized, foreign currency exchange gain or loss will be realized based on the difference between spot rates at such time and the time of acquisition of the Non-U.S. Dollar Denominated Debt Security. If a U.S. Holder does not elect to amortize bond premium, the bond premium computed in the foreign currency must be translated into U.S. dollars at the spot rate on the maturity date and such bond premium will constitute a capital loss which may be offset or eliminated by foreign currency exchange gain.

If a U.S. Holder purchases a Non-U.S. Dollar Denominated Debt Security with previously owned foreign currency, foreign currency exchange gain or loss (which will be treated as ordinary income or loss) will be recognized in an amount equal to the difference, if any, between the tax basis in the foreign currency and the U.S. dollar fair market value of the foreign currency used to purchase the Non-U.S. Dollar Denominated Debt Security, determined on the date of purchase.

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Upon the sale, exchange, retirement, or other taxable disposition of a Non-U.S. Dollar Denominated Debt Security, a U.S. Holder will recognize gain or loss equal to the difference between the amount realized upon the sale, exchange, retirement, or other disposition (less an amount equal to any accrued and unpaid interest not previously included in income, which will be treated as a payment of interest for U.S. federal income tax purposes) and the adjusted tax basis in the Non-U.S. Dollar Denominated Debt Security. The adjusted tax basis in a Non-U.S. Dollar Denominated Debt Security will equal the amount paid for the Non-U.S. Dollar Denominated Debt Security, increased by the amounts of any market discount or OID previously included in income with respect to the Non-U.S. Dollar Denominated Debt Security and reduced by any amortized acquisition or other premium and any principal payments received in respect of the Non-U.S. Dollar Denominated Debt Security. The amount of any payment in or adjustments measured by foreign currency will be equal to the U.S. dollar value of the foreign currency on the date of the purchase or adjustment. The amount realized will be based on the U.S. dollar value of the foreign currency on the date the payment is received or the Non-U.S. Dollar Denominated Debt Security is disposed of (or deemed disposed of as a result of a material change in the terms of the debt security). If, however, a Non-U.S. Dollar Denominated Debt Security is traded on an established securities market and the U.S. Holder uses the cash basis method of tax accounting, the U.S. dollar value of the amount realized will be determined by translating the foreign currency payment at the spot rate of exchange on the settlement date of the purchase or sale. A U.S. Holder that uses the accrual basis method of tax accounting may elect the same treatment with respect to the purchase and sale of Non-U.S. Dollar Denominated Debt Securities traded on an established securities market, provided that the election is applied consistently.

Except with respect to market discount as discussed above, and the foreign currency rules discussed below, gain or loss recognized upon the sale, exchange, retirement, or other taxable disposition of a Non-U.S. Dollar Denominated Debt Security will be capital gain or loss and will be long-term capital gain or loss if at the time of sale, exchange, retirement, or other disposition, the Non-U.S. Dollar Denominated Debt Security has been held for more than one year. Net long-term capital gain recognized by an individual U.S. Holder is generally taxed at preferential rates. The ability of U.S. Holders to deduct capital losses is subject to limitations under the Code.

A portion of the gain or loss with respect to the principal amount of a Non-U.S. Dollar Denominated Debt Security may be treated as foreign currency exchange gain or loss. Foreign currency exchange gain or loss will be treated as ordinary income or loss. For these purposes, the principal amount of the Non-U.S. Dollar Denominated Debt Security is the purchase price for the Non-U.S. Dollar Denominated Debt Security calculated in the foreign currency on the date of purchase, and the amount of exchange gain or loss recognized is equal to the difference between (i) the U.S. dollar value of the principal amount determined on the date of the sale, exchange, retirement or other disposition of the Non-U.S. Dollar Denominated Debt Security and (ii) the U.S. dollar value of the principal amount determined on the date the Non-U.S. Dollar Denominated Debt Security was purchased. The amount of foreign currency exchange gain or loss will be limited to the amount of overall gain or loss realized on the disposition of the Non-U.S. Dollar Denominated Debt Security.

The tax basis in foreign currency received as interest on a Non-U.S. Dollar Denominated Debt Security will be the U.S. dollar value of the foreign currency determined at the spot rate in effect on the date the foreign currency is received. The tax basis in foreign currency received on the sale, exchange, retirement, or other disposition of a Non-U.S. Dollar Denominated Debt Security will be equal to the U.S. dollar value of the foreign currency, determined at the time of the sale, exchange, retirement or other disposition. As discussed above, if the Non-U.S. Dollar Denominated Debt Securities are traded on an established securities market, a cash basis U.S. Holder (or, upon election, an accrual basis U.S. Holder) will determine the U.S. dollar value of the foreign currency



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by translating the foreign currency received at the spot rate of exchange on the settlement date of the sale, exchange, retirement, or other disposition. Accordingly, in such case, no foreign currency exchange gain or loss will result from currency fluctuations between the trade date and settlement date of a sale, exchange, retirement, or other disposition. Any gain or loss recognized on a sale, exchange, retirement, or other disposition of foreign currency (including its exchange for U.S. dollars or its use to purchase debt securities) will be ordinary income or loss.

Special rules may apply to Non-U.S. Dollar Denominated Debt Securities that are also treated as contingent payment debt instruments. For the special treatment, if any, of Non-U.S. Dollar Denominated Debt Securities that are also contingent payment debt securities, see the applicable supplement.

*Additional Medicare Tax on Unearned Income.* Certain U.S. Holders, including individuals, estates and trusts, are subject to an additional 3.8% Medicare tax on unearned income. For individual U.S. Holders, the additional Medicare tax applies to the lesser of (i) “net investment income” or (ii) the excess of “modified adjusted gross income” over \$200,000 (\$250,000 if married and filing jointly or \$125,000 if married and filing separately). “Net investment income” generally equals the taxpayer’s gross investment income reduced by the deductions that are allocable to such income. Investment income generally includes passive income such as interest and capital gains. U.S. Holders are urged to consult their own tax advisors regarding the implications of the additional Medicare tax resulting from an investment in the debt securities.

### ***Consequences to Non-U.S. Holders***

The following is a summary of the material U.S. federal income tax consequences that will apply to Non-U.S. Holders of debt securities. Non-U.S. Holders should consult their own tax advisors regarding the U.S. and non-U.S. tax considerations of acquiring, holding, and disposing of debt securities.

*Payments of Interest.* Under current U.S. federal income tax law and subject to the discussion below concerning backup withholding, principal (and premium, if any) and interest payments, including any OID, that are received from us or our agent and that are not effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States, or a permanent establishment maintained in the United States if certain tax treaties apply, generally will not be subject to U.S. federal income or withholding tax except as provided below. Interest, including any OID, may be subject to a 30% withholding tax (or less under an applicable treaty, if any) if:

- a Non-U.S. Holder actually or constructively owns 10% or more of the total combined voting power of all classes of our stock entitled to vote;
- a Non-U.S. Holder is a “controlled foreign corporation” for U.S. federal income tax purposes that is related to us (directly or indirectly) through stock ownership;
- a Non-U.S. Holder is a bank extending credit under a loan agreement in the ordinary course of its trade or business;
- the interest payments on the debt security are determined by reference to the income, profits, changes in the value of property or other attributes of the debtor or a related party (other than payments that are based on the value of a security or index of securities that are, and will continue to be, actively traded within the meaning of Section 1092(d) of the Code, and that are not nor will be a “United States real property interest” as described in Section 897(c)(1) or 897(g) of the Code); or
- the Non-U.S. Holder does not satisfy the certification requirements described below.

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A Non-U.S. Holder generally will satisfy the certification requirements if either: (A) the Non-U.S. Holder certifies to us or our agent, under penalties of perjury, that it is a non-United States person and provides its name and address (which certification may generally be made on an IRS Form W-8BEN or W-8BEN-E, or a successor form), or (B) a securities clearing organization, bank, or other financial institution that holds customer securities in the ordinary course of its trade or business (a “financial institution”) and holds the debt security certifies to us or our agent under penalties of perjury that either it or another financial institution has received the required statement from the Non-U.S. Holder certifying that it is a non-United States person and furnishes us with a copy of the statement.

Payments not meeting the requirements set forth above and thus subject to withholding of U.S. federal income tax may nevertheless be exempt from withholding (or subject to withholding at a reduced rate) if the Non-U.S. Holder provides us with a properly executed IRS Form W-8BEN or W-8BEN-E (or successor form) claiming an exemption from, or reduction in, withholding under the benefit of a tax treaty, or IRS Form W-8ECI (or other applicable form) stating that interest paid on the debt securities is not subject to withholding tax because it is effectively connected with the conduct of a trade or business within the United States as discussed below. To claim benefits under an income tax treaty, a Non-U.S. Holder must obtain a taxpayer identification number and certify as to its eligibility under the appropriate treaty’s limitations on benefits article. In addition, special rules may apply to claims for treaty benefits made by Non-U.S. Holders that are entities rather than individuals. A Non-U.S. Holder that is eligible for a reduced rate of U.S. federal withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS.

*Additional Payments.* If the amount or timing of any payments on a debt security is contingent, the interest payments on the debt security may be treated as “contingent interest” under Section 871(h)(4) of the Code, in which case such interest may not be eligible for the exemption from U.S. federal income and withholding tax, as described above (other than for a holder that otherwise claims an exemption from, or reduction in, withholding under the benefit of an income tax treaty). In certain circumstances, if specified in the applicable supplement, we will pay to a Non-U.S. Holder of any debt security additional amounts to ensure that every net payment on that debt security will not be less, due to the payment of U.S. federal withholding tax, than the amount then otherwise due and payable. See “Description of Debt Securities—Payment of Additional Amounts” above. However, because the likelihood that such payments will be made is remote, we do not believe that, because of these potential additional payments, the interest on the debt securities should be treated as contingent interest.

*Sale, Exchange, or Retirement of Debt Securities.* A Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax on any capital gain or market discount realized on the sale, exchange, retirement, or other disposition of debt securities, provided that: (a) the gain is not effectively connected with the conduct of a trade or business within the United States, or a permanent establishment maintained in the United States if certain tax treaties apply, (b) in the case of a Non-U.S. Holder that is an individual, the Non-U.S. Holder is not present in the United States for 183 days or more in the taxable year of the sale, exchange, or other disposition of the debt security, and (c) the Non-U.S. Holder is not subject to tax pursuant to certain provisions of U.S. federal income tax law applicable to certain expatriates. An individual Non-U.S. Holder who is present in the United States for 183 days or more in the taxable year of sale, exchange, or other disposition of a debt security, and if certain other conditions are met, will be subject to U.S. federal income tax at a rate of 30% on the gain realized on the sale, exchange, or other disposition of such debt security.

*Income Effectively Connected with a Trade or Business within the United States.* If a Non-U.S. Holder of a debt security is engaged in the conduct of a trade or business within the United States

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and if interest (including any OID) on the debt security, or gain realized on the sale, exchange, or other disposition of the debt security, is effectively connected with the conduct of such trade or business (and, if certain tax treaties apply, is attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States), the Non-U.S. Holder, although exempt from U.S. federal withholding tax (provided that the certification requirements discussed above are satisfied), generally will be subject to U.S. federal income tax on such interest (including any OID) or gain on a net income basis in the same manner as if it were a U.S. Holder. Non-U.S. holders should read the material under the heading “—Consequences to U.S. Holders,” for a description of the U.S. federal income tax consequences of acquiring, owning, and disposing of debt securities. In addition, if such Non-U.S. Holder is a foreign corporation, it may also be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable U.S. income tax treaty) of a portion of its earnings and profits for the taxable year that are effectively connected with its conduct of a trade or business in the United States, subject to certain adjustments.

### ***Convertible, Renewable, Extendible, Indexed, and Other Debt Securities***

Special U.S. federal income tax rules are applicable to certain other debt securities, including contingent Non-U.S. Dollar Denominated Debt Securities, debt securities that may be convertible into or exercisable or exchangeable for our common or preferred stock or other securities or debt or equity securities of one or more third parties, debt securities the payments on which are determined or partially determined by reference to any index and other debt securities that are subject to the rules governing contingent payment obligations which are not subject to the rules governing variable rate debt securities, any renewable and extendible debt securities and any debt securities providing for the periodic payment of principal over the life of the debt security. The material U.S. federal income tax considerations with respect to these debt securities will be discussed in the applicable supplement.

### ***Backup Withholding and Information Reporting***

In general, in the case of a U.S. Holder, other than certain exempt holders, we and other payors are required to report to the IRS all payments of principal, any premium, and interest on the debt security, and the accrual of OID on an OID debt security. In addition, we and other payors generally are required to report to the IRS any payment of proceeds of the sale of a debt security before maturity. Additionally, backup withholding generally will apply to any payments, including payments of OID, if a U.S. Holder fails to provide an accurate taxpayer identification number and certify that the taxpayer identification number is correct, the U.S. Holder is notified by the IRS that it has failed to report all interest and dividends required to be shown on its U.S. federal income tax returns or a U.S. Holder does not certify that it has not underreported its interest and dividend income.

In the case of a Non-U.S. Holder, backup withholding and information reporting will not apply to payments made if the Non-U.S. Holder provides the required certification that it is not a United States person, or the Non-U.S. Holder otherwise establishes an exemption, provided that the payor or withholding agent does not have actual knowledge or reason to know that the holder is a United States person, or that the conditions of any exemption are not satisfied. However, we and other payors are required to report payments of interest on the debt securities on IRS Form 1042-S even if the payments are not otherwise subject to information reporting requirements.

In addition, payments of the proceeds from the sale of a debt security to or through a foreign office of a broker or the foreign office of a custodian, nominee, or other dealer acting on behalf of a holder generally will not be subject to information reporting or backup withholding. However, if the

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broker, custodian, nominee, or other dealer is a United States person, the government of the United States or the government of any state or political subdivision of any state, or any agency or instrumentality of any of these governmental units, a controlled foreign corporation for U.S. federal income tax purposes, a foreign partnership that is either engaged in a trade or business within the United States or whose United States partners in the aggregate hold more than 50% of the income or capital interest in the partnership, a foreign person 50% or more of whose gross income for a certain period is effectively connected with a trade or business within the United States, or a United States branch of a foreign bank or insurance company, information reporting (but not backup withholding) generally will be required with respect to payments made to a holder unless the broker, custodian, nominee, or other dealer has documentation of the holder's foreign status and the broker, custodian, nominee, or other dealer has no reason to know or actual knowledge to the contrary.

Payment of the proceeds from a sale of a debt security to or through the United States office of a broker is subject to information reporting and backup withholding, unless the holder certifies as to its non-United States person status or otherwise establishes an exemption from information reporting and backup withholding.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a holder's U.S. federal income tax liability provided the required information is furnished to the IRS.

### **Taxation of Common Stock, Preferred Stock, and Depositary Shares**

This subsection describes the material U.S. federal income tax consequences of the acquisition, ownership and disposition of the common stock, preferred stock and depositary shares offered in this prospectus.

#### ***Taxation of Holders of Depositary Shares***

For U.S. federal income tax purposes, holders of depositary shares generally will be treated as if they were the holders of the preferred stock represented by such depositary shares. Accordingly, such holders will be entitled to take into account, for U.S. federal income tax purposes, income, and deductions to which they would be entitled if they were holders of such preferred stock, as described more fully below. Exchanges of preferred stock for depositary shares and depositary shares for preferred stock generally will not be subject to U.S. federal income taxation.

#### ***Consequences to U.S. Holders***

The following is a summary of the material U.S. federal income tax consequences that will apply to U.S. Holders of our common stock, preferred stock, and depositary shares.

*Distributions on Common Stock, Preferred Stock, and Depositary Shares.* Distributions made to U.S. Holders out of our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes, will be included in the income of a U.S. Holder as dividend income and will be subject to tax as ordinary income. Dividends received by an individual U.S. Holder that constitute "qualified dividend income" are generally subject to tax at a maximum rate of 20% applicable to net long-term capital gains, provided that certain holding period and other requirements are met. Dividends received by a corporate U.S. Holder, except as described in the next subsection, generally will be eligible for the 70% dividends-received deduction.

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Distributions in excess of our current and accumulated earnings and profits will not be taxable to a U.S. Holder to the extent that the distributions do not exceed the U.S. Holder's adjusted tax basis in the shares, but rather will reduce the adjusted tax basis of such shares. To the extent that distributions in excess of our current and accumulated earnings and profits exceed the U.S. Holder's adjusted tax basis in the shares, such distributions will be included in income as capital gain. In addition, a corporate U.S. Holder will not be entitled to the dividends-received deduction on this portion of a distribution.

We will notify holders of our shares after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, qualified dividend income and nondividend distributions, if any.

*Limitations on Dividends-Received Deduction.* A corporate U.S. Holder may not be entitled to take the 70% dividends-received deduction in all circumstances. Prospective corporate investors in our common stock, preferred stock, or depositary shares should consider the effect of:

- Section 246A of the Code, which reduces the dividends-received deduction allowed to a corporate U.S. Holder that has incurred indebtedness that is "directly attributable" to an investment in portfolio stock, which may include our common stock, preferred stock, and depositary shares;
- Section 246(c) of the Code, which, among other things, disallows the dividends-received deduction in respect of any dividend on a share of stock that is held for less than the minimum holding period (generally, for common stock, at least 46 days during the 90 day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend); and
- Section 1059 of the Code, which, under certain circumstances, reduces the basis of stock for purposes of calculating gain or loss in a subsequent disposition by the portion of any "extraordinary dividend" (as defined below) that is eligible for the dividends-received deduction.

*Extraordinary Dividends.* A corporate U.S. Holder will be required to reduce its tax basis (but not below zero) in our common stock, preferred stock, or depositary shares by the nontaxed portion of any "extraordinary dividend" if the stock was not held for more than two years before the earliest of the date such dividend is declared, announced, or agreed. Generally, the nontaxed portion of an extraordinary dividend is the amount excluded from income by operation of the dividends-received deduction. An extraordinary dividend generally would be a dividend that:

- in the case of common stock, equals or exceeds 10% of the corporate U.S. Holder's adjusted tax basis in the common stock, treating all dividends having ex-dividend dates within an 85 day period as one dividend; or
- in the case of preferred stock, equals or exceeds 5% of the corporate U.S. Holder's adjusted tax basis in the preferred stock, treating all dividends having ex-dividend dates within an 85 day period as one dividend; or
- exceeds 20% of the corporate U.S. Holder's adjusted tax basis in the stock, treating all dividends having ex-dividend dates within a 365 day period as one dividend.

In determining whether a dividend paid on stock is an extraordinary dividend, a corporate U.S. Holder may elect to substitute the fair market value of the stock for its tax basis for purposes of

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applying these tests if the fair market value as of the day before the ex-dividend date is established to the satisfaction of the Secretary of the Treasury. An extraordinary dividend also includes any amount treated as a dividend in the case of a redemption that is either non-pro rata as to all stockholders or in partial liquidation of the corporation, regardless of the stockholder's holding period and regardless of the size of the dividend. Any part of the nontaxed portion of an extraordinary dividend that is not applied to reduce the corporate U.S. Holder's tax basis as a result of the limitation on reducing its basis below zero would be treated as capital gain and would be recognized in the taxable year in which the extraordinary dividend is received.

*Corporate U.S. Holders should consult with their own tax advisors with respect to the possible application of the extraordinary dividend provisions of the Code to the ownership or disposition of common stock, preferred stock, or depositary shares in their particular circumstances.*

*Sale, Exchange, or other Taxable Disposition.* Upon the sale, exchange, or other taxable disposition of our common stock, preferred stock, or depositary shares (other than by redemption or repurchase by us), a U.S. Holder generally will recognize gain or loss equal to the difference between the amount realized upon the sale, exchange, or other taxable disposition and the U.S. Holder's adjusted tax basis in the shares. The amount realized by the U.S. Holder will include the amount of any cash and the fair market value of any other property received upon the sale, exchange, or other taxable disposition of the shares. A U.S. Holder's tax basis in a share generally will be equal to the cost of the share to such U.S. Holder, which may be adjusted for certain subsequent events (for example, if the U.S. Holder receives a nondividend distribution, as described above). Gain or loss realized on the sale, exchange, or other taxable disposition of our common stock, preferred stock, or depositary shares generally will be capital gain or loss and will be long-term capital gain or loss if the shares have been held for more than one year. Net long-term capital gain recognized by an individual U.S. Holder is generally taxed at preferential rates. The ability of U.S. Holders to deduct capital losses is subject to limitations under the Code.

*Redemption or Repurchase of Common Stock, Preferred Stock, or Depositary Shares.* If we are permitted to and redeem or repurchase a U.S. Holder's common stock, preferred stock, or depositary shares, the redemption or repurchase generally would be a taxable event for U.S. federal income tax purposes. A U.S. Holder would be treated as if it had sold its shares if the redemption or repurchase:

- results in a complete termination of the U.S. holder's stock interest in us;
- is substantially disproportionate with respect to the U.S. Holder; or
- is not essentially equivalent to a dividend with respect to the U.S. Holder, in each case as determined under the Code.

In determining whether any of these tests has been met, shares of stock considered to be owned by a U.S. Holder by reason of certain constructive ownership rules set forth in Section 318 of the Code, as well as shares actually owned, must be taken into account.

If we redeem or repurchase a U.S. Holder's shares in a redemption or repurchase that meets one of the tests described above, the U.S. Holder generally would recognize taxable gain or loss equal to the sum of the amount of cash and fair market value of property (other than our stock or the stock of a successor to us) received less the U.S. Holder's tax basis in the shares redeemed or repurchased. This gain or loss generally would be long-term capital gain or capital loss if the shares have been held for more than one year.

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If a redemption or repurchase does not meet any of the tests described above, a U.S. Holder generally will be taxed on the cash and fair market value of the property received as a dividend to the extent paid out of our current and accumulated earnings and profits. Any amount in excess of our current or accumulated earnings and profits would first reduce the U.S. holder's tax basis in the shares and thereafter would be treated as capital gain. If a redemption or repurchase is treated as a distribution that is taxable as a dividend, the U.S. Holder's tax basis in the redeemed or repurchased shares would be transferred to the remaining shares of our stock that the U.S. Holder owns, if any.

Special rules apply if we redeem our common stock, preferred stock, or depositary shares for our debt securities. We will discuss any special U.S. federal income tax considerations in the applicable supplement if we have the option to redeem our common stock, preferred stock, or depositary shares for our debt securities.

*Additional Medicare Tax on Unearned Income.* Certain U.S. Holders, including individuals, estates and trusts, are subject to an additional 3.8% Medicare tax on unearned income. For individual U.S. Holders, the additional Medicare tax applies to the lesser of (i) "net investment income" or (ii) the excess of "modified adjusted gross income" over \$200,000 (\$250,000 if married and filing jointly or \$125,000 if married and filing separately). "Net investment income" generally equals the taxpayer's gross investment income reduced by the deductions that are allocable to such income. Investment income generally includes passive income such as dividends and capital gains. U.S. Holders are urged to consult their own tax advisors regarding the implications of the additional Medicare tax resulting from an investment in the preferred stock, common stock, or depositary shares.

### ***Consequences to Non-U.S. Holders***

The following is a summary of the material U.S. federal income tax consequences that will apply to Non-U.S. Holders of our common stock, preferred stock, and depositary shares.

*Distributions on Common Stock, Preferred Stock, and Depositary Shares.* Distributions made to Non-U.S. Holders out of our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes, and that is not effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States, or a permanent establishment maintained in the United States if certain tax treaties apply, generally will be subject to U.S. federal income and withholding tax at a rate of 30% (or lower rate under an applicable treaty, if any). Payments subject to withholding of U.S. federal income tax may nevertheless be exempt from withholding (or subject to withholding at a reduced rate) if the Non-U.S. Holder provides us with a properly executed IRS Form W-8BEN or W-8BEN-E (or successor form) claiming an exemption from, or reduction in, withholding under the benefit of a tax treaty, or IRS Form W-8ECI (or other applicable form) stating that a dividend paid on our shares is not subject to withholding tax because it is effectively connected with the conduct of a trade or business within the United States, as discussed below.

To claim benefits under an income tax treaty, a Non-U.S. Holder must certify to us or our agent, under penalties of perjury, that it is a non-United States person and provide its name and address (which certification may generally be made on an IRS Form W-8BEN or W-8BEN-E, or a successor form), obtain and provide a taxpayer identification number, and certify as to its eligibility under the appropriate treaty's limitations on benefits article. In addition, special rules may apply to claims for treaty benefits made by Non-U.S. Holders that are entities rather than individuals. A Non-U.S. Holder that is eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS.

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*Sale, Exchange, or other Taxable Disposition.* A Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax on any capital gain realized on the sale, exchange, or other taxable disposition of our common stock, preferred stock, or depositary shares, provided that: (a) the gain is not effectively connected with the conduct of a trade or business within the United States, or a permanent establishment maintained in the United States if certain tax treaties apply, (b) in the case of a Non-U.S. Holder that is an individual, the Non-U.S. Holder is not present in the United States for 183 days or more in the taxable year of the sale, exchange, or other disposition of the shares, (c) the Non-U.S. Holder is not subject to tax pursuant to certain provisions of U.S. federal income tax law applicable to certain expatriates, and (d) we are not nor have we been a “United States real property holding corporation” for U.S. federal income tax purposes. An individual Non-U.S. Holder who is present in the United States for 183 days or more in the taxable year of sale, exchange, or other disposition of our common stock, preferred stock, or depositary shares and if certain other conditions are met, will be subject to U.S. federal income tax at a rate of 30% on the gains realized on the sale, exchange, or other disposition of such shares.

We would not be treated as a “United States real property holding corporation” if less than 50% of our assets throughout a prescribed testing period consist of interests in real property located within the United States, excluding, for this purpose, interests in real property solely in a capacity as a creditor. Even if we are treated as a “United States real property holding corporation,” a Non-U.S. Holder’s sale of our common stock, preferred stock, or depositary shares nonetheless generally will not be subject to U.S. federal income or withholding tax, provided that (a) our stock owned is of a class that is “regularly traded,” as defined by applicable Treasury regulations, on an established securities market, and (b) the selling Non-U.S. Holder held, actually or constructively, 5% or less of our outstanding stock of that class at all times during the five-year period ending on the date of disposition.

To the extent we are or have been a “United States real property holding corporation” for U.S. federal income tax purposes and a Non-U.S. Holder held, directly or indirectly, at any time during the five-year period ending on the date of disposition, more than 5% of the class of stock and the non-U.S. Holder was not eligible for any treaty exemption, any gain on the sale of our common stock, preferred stock, or depositary shares would be treated as effectively connected with a trade or business within the United States, the treatment of which is described below, and the purchaser of the stock could be required to withhold 10% of the purchase price and remit such amount to the IRS.

We believe that we are not currently, and do not anticipate becoming, a “United States real property holding corporation” for U.S. federal income tax purposes.

*Income Effectively Connected with a Trade or Business within the United States.* If a Non-U.S. Holder of our common stock, preferred stock, or depositary shares is engaged in the conduct of a trade or business within the United States and if dividends on the shares, or gain realized on the sale, exchange, or other disposition of the shares, are effectively connected with the conduct of such trade or business (and, if certain tax treaties apply, is attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States), the Non-U.S. Holder, although exempt from U.S. federal withholding tax (provided that the certification requirements discussed above are satisfied), generally will be subject to U.S. federal income tax on such dividends or gain on a net income basis in the same manner as if it were a U.S. Holder. Non-U.S. Holders should read the material under the heading “—Consequences to U.S. Holders” above for a description of the U.S. federal income tax consequences of acquiring, owning, and disposing of our common stock, preferred stock, or depositary shares. In addition, if such Non-U.S. Holder is a foreign corporation, it may also be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable U.S. income tax treaty) of a portion of its earnings and profits for the taxable year that



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are effectively connected with its conduct of a trade or business in the United States, subject to certain adjustments.

### ***Backup Withholding and Information Reporting***

In general, in the case of a U.S. Holder, other than certain exempt holders, we and other payors are required to report to the IRS all payments of dividends on our common stock, preferred stock, or depository shares. In addition, we and other payors generally are required to report to the IRS any payment of proceeds of the sale of common stock, preferred stock, or depository shares. Additionally, backup withholding generally will apply to any dividend payment and to proceeds received on a sale or exchange if a U.S. Holder fails to provide an accurate taxpayer identification number and certify that the taxpayer identification number is correct, the U.S. Holder is notified by the IRS that it has failed to report all dividends required to be shown on its U.S. federal income tax returns, or the U.S. Holder does not certify that it has not underreported its interest and dividend income.

In the case of a Non-U.S. Holder, backup withholding and information reporting will not apply to payments made if the Non-U.S. Holder provides the required certification that it is not a United States person, as described above, or the Non-U.S. Holder otherwise establishes an exemption, provided that the payor or withholding agent does not have actual knowledge or reason to know that the holder is a United States person, or that the conditions of any exemption are not satisfied.

In addition, payments of the proceeds from the sale of our common stock, preferred stock, or depository shares to or through a foreign office of a broker or the foreign office of a custodian, nominee, or other dealer acting on behalf of a holder generally will not be subject to information reporting or backup withholding. However, if the broker, custodian, nominee, or other dealer is a United States person, the government of the United States or the government of any state or political subdivision of any state, or any agency or instrumentality of any of these governmental units, a controlled foreign corporation for U.S. federal income tax purposes, a foreign partnership that is either engaged in a trade or business within the United States or whose United States partners in the aggregate hold more than 50% of the income or capital interest in the partnership, a foreign person 50% or more of whose gross income for a certain period is effectively connected with a trade or business within the United States, or a United States branch of a foreign bank or insurance company, information reporting (but not backup withholding) generally will be required with respect to payments made to a holder unless the broker, custodian, nominee, or other dealer has documentation of the holder's foreign status and the broker, custodian, nominee, or other dealer has no reason to know or actual knowledge to the contrary.

Payment of the proceeds from a sale of our common stock, preferred stock, or depository shares to or through the United States office of a broker is subject to information reporting and backup withholding, unless the holder certifies as to its non-United States person status or otherwise establishes an exemption from information reporting and backup withholding.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a holder's U.S. federal income tax liability provided the required information is furnished to the IRS.

### ***Convertible Preferred Stock and Other Equity Securities***

Special U.S. federal income tax rules are applicable to certain other of our equity securities, including preferred stock convertible into or exercisable or exchangeable for our common stock or

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other securities. The material U.S. federal income tax considerations with respect to these securities will be discussed in the applicable pricing supplement. Investors should consult with their own tax advisors regarding the specific U.S. federal income tax considerations with respect to these securities.

### **Taxation of Warrants**

The applicable supplement will contain a discussion of any special U.S. federal income tax considerations with respect to the acquisition, ownership and disposition of warrants offered in this prospectus, including any tax considerations relating to the specific terms of the warrants. Investors considering the purchase of warrants we are offering should carefully examine the applicable supplement regarding the special U.S. federal income tax considerations, if any, of the acquisition, ownership and disposition of the warrants.

*Investors should consult with their own tax advisors regarding the U.S. federal income tax consequences and the tax consequences of any other taxing jurisdiction relating to the ownership and disposition of warrants we are offering in light of their investment or tax circumstances.*

### **Taxation of Purchase Contracts**

The applicable supplement will contain a discussion of any special U.S. federal income tax considerations with respect to the acquisition, ownership and disposition of purchase contracts offered in this prospectus, including any tax considerations relating to the specific terms of the purchase contracts. Investors considering the purchase of purchase contracts we are offering should carefully examine the applicable supplement regarding the special U.S. federal income tax considerations, if any, of the acquisition, ownership and disposition of the purchase contracts.

*Investors should consult with their own tax advisors regarding the U.S. federal income tax consequences and the tax consequences of any other taxing jurisdiction relating to the ownership and disposition of the purchase contracts in light of their investment or tax circumstances.*

### **Taxation of Units**

The applicable supplement will contain a discussion of any special U.S. federal income tax considerations with respect to the acquisition, ownership and disposition of units that we are offering, including any tax considerations relating to the specific terms of the units. Investors considering the purchase of units that we are offering should carefully examine the applicable supplement regarding the special U.S. federal income tax consequences, if any, of the acquisition, ownership and disposition of the units.

*Investors should consult with their own tax advisors regarding the U.S. federal income tax consequences and the tax consequences of any other taxing jurisdiction relating to the ownership and disposition of units comprised of one or more of the securities we are offering in light of their investment or tax circumstances.*

### **Reportable Transactions**

Applicable Treasury regulations require taxpayers that participate in “reportable transactions” to disclose their participation to the IRS by attaching Form 8886 to their U.S. federal tax returns and to retain a copy of all documents and records related to the transaction. In addition, “material

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advisors” with respect to such a transaction may be required to file returns and maintain records, including lists identifying investors in the transactions, and to furnish those records to the IRS upon demand. A transaction may be a “reportable transaction” based on any of several criteria, one or more of which may be present with respect to an investment in the securities that we are offering. Whether an investment in these securities constitutes a “reportable transaction” for any investor depends on the investor’s particular circumstances. The Treasury regulations provide that, in addition to certain other transactions, a “loss transaction” constitutes a “reportable transaction.” A “loss transaction” is any transaction resulting in the taxpayer claiming a loss under Section 165 of the Code, in an amount equal to or in excess of certain threshold amounts, subject to certain exceptions. The Treasury regulations specifically provide that a loss resulting from a “Section 988 transaction” will constitute a Section 165 loss, and certain exceptions will not be available if the loss from sale or exchange is treated as ordinary under Section 988. In general, certain securities issued in a foreign currency will be subject to the rules governing foreign currency exchange gain or loss. Therefore, losses realized with respect to such a security may constitute a Section 988 transaction, and a holder of such a security that recognizes exchange loss in an amount that exceeds the loss threshold amount applicable to that holder may be required to file Form 8886. Investors should consult their own tax advisors concerning any possible disclosure obligation they may have with respect to their investment in the securities that we are offering and should be aware that, should any “material advisor” determine that the return filing or investor list maintenance requirements apply to such a transaction, they would be required to comply with these requirements.

### **Foreign Account Tax Compliance Act**

The Foreign Account Tax Compliance Act (“FATCA”) (sections 1471 through 1474 of the Code) imposes a 30% U.S. withholding tax on certain U.S. source payments, including interest (and OID), dividends, other fixed or determinable annual or periodical gain, profits, and income, and on the gross proceeds from a disposition of property of a type which can produce U.S. source interest or dividends (“Withholdable Payments”), if paid to a foreign financial institution (including amounts paid to a foreign financial institution on behalf of a holder), unless such institution enters into an agreement with the Treasury to collect and provide to the Treasury certain information regarding U.S. financial account holders, including certain account holders that are foreign entities with U.S. owners, with such institution or otherwise complies with FATCA. FATCA also generally imposes a withholding tax of 30% on Withholdable Payments made to a non-financial foreign entity unless such entity provides the withholding agent with a certification that it does not have any substantial U.S. owners or a certification identifying the direct and indirect substantial U.S. owners of the entity. Under certain circumstances, a holder may be eligible for refunds or credits of such taxes.

These withholding and reporting requirements generally apply to U.S. source periodic payments made after June 30, 2014 and to payments of gross proceeds from a sale or redemption made after December 31, 2016. If we (or an applicable withholding agent) determine withholding under FATCA is appropriate, we (or such agent) will withhold tax at the applicable statutory rate, without being required to pay any additional amounts in respect of such withholding. Foreign financial institutions and non-financial foreign entities located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Holders are urged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in the debt securities, preferred stock, depository shares, or common stock.

## EU DIRECTIVE ON THE TAXATION OF SAVINGS INCOME

Under Council Directive 2003/48/EC on the taxation of savings income, a member state of the European Union (“EU”) is required to provide to the tax authorities of another EU member state details of payments of interest or other similar income payments or deemed payments made by a person (such as an issuer or paying agent) within its jurisdiction for the immediate benefit of an individual in that other EU member state (including certain payments secured for their benefit) or to certain other persons. However, Austria has opted out of the above reporting requirements and instead is applying a special withholding tax for a transitional period in relation to such payments of interest. The withholding tax is currently imposed at the rate of 35%. Withholding tax is not applied if the individual presents a certificate in the required form from the tax authority of his or her EU member state of residence that confirms that the applicable tax authority is aware of the investment made abroad. This transitional period will terminate at the end of the first fiscal year following agreement by certain non-EU countries to the exchange of information relating to such payments.

A number of non-EU countries and certain dependent or associated territories of EU member states have adopted similar measures (either provision of information or transitional withholding) in relation to payments of interest or other similar income payments made by a person in that jurisdiction for the immediate benefit of an individual or to certain non-corporate entities in any EU member state. The EU member states have entered into reciprocal provision of information or transactional special withholding tax arrangements with certain of those dependent or associated territories. These apply in the same way as payments by persons in any EU member state to individuals of another EU member state.

**PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)**

We may sell the securities offered under this prospectus:

- through underwriters;
- through dealers;
- through agents; or
- directly to purchasers.

In addition, we may issue the securities as a dividend or distribution or in a subscription rights offering to our existing security holders.

The underwriters, dealers, or agents may include Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”), or any of our other affiliates.

Each supplement relating to an offering of securities will state the terms of the offering, including:

- the names of any underwriters, dealers, or agents;
- the public offering or purchase price of the offered securities and the net proceeds that we will receive from the sale;
- any underwriting discounts and commissions or other items constituting underwriters’ compensation;
- any discounts, commissions, or fees allowed or paid to dealers or agents; and
- any securities exchange on which the offered securities may be listed.

**Distribution Through Underwriters**

We may offer and sell securities from time to time to one or more underwriters who would purchase the securities as principal for resale to the public, either on a firm commitment or best efforts basis. If we sell securities to underwriters, we will execute an underwriting agreement with them at the time of the sale and will name them in the applicable supplement. In connection with these sales, the underwriters may be deemed to have received compensation from us in the form of underwriting discounts and commissions. The underwriters also may receive commissions from purchasers of securities for whom they may act as agent. Unless we specify otherwise in the applicable supplement, the underwriters will not be obligated to purchase the securities unless the conditions set forth in the underwriting agreement are satisfied, and if the underwriters purchase any of the securities, they will be required to purchase all of the offered securities. The underwriters may acquire the securities for their own account and may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or varying prices determined at the time of sale. The underwriters may sell the offered securities to or through dealers, and those dealers may receive discounts, concessions, or commissions from the underwriters as well as from the purchasers for whom they may act as agent. Any initial public offering price and any discounts or concessions allowed or reallowed or paid to dealers may be changed from time to time.

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### **Distribution Through Dealers**

We may offer and sell securities from time to time to one or more dealers who would purchase the securities as principal. The dealers then may resell the offered securities to the public at fixed or varying prices to be determined by those dealers at the time of resale. We will set forth the names of the dealers and the terms of the transaction in the applicable supplement.

### **Distribution Through Agents**

We may offer and sell securities on a continuous basis through agents that become parties to an underwriting or distribution agreement. We will name any agent involved in the offer and sale, and describe any commissions payable by us in the applicable supplement. Unless we specify otherwise in the applicable supplement, the agent will be acting on a best efforts basis during the appointment period.

### **Direct Sales**

We may sell directly to, and solicit offers from, institutional investors or others who may be deemed to be underwriters, as defined in the Securities Act of 1933, for any resale of the securities. We will describe the terms of any sales of this kind in the applicable supplement.

### **General Information**

Underwriters, dealers, or agents participating in an offering of securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the offered securities for whom they act as agent, may be deemed to be underwriting discounts and commissions under the Securities Act of 1933.

We may offer to sell securities either at a fixed price or at prices that may vary, at market prices prevailing at the time of sale, at prices related to prevailing market prices, or at negotiated prices. Securities may be sold in connection with a remarketing after their purchase by one or more firms including our affiliates, acting as principal for their own accounts or as our agent.

In connection with an underwritten offering of the securities, the underwriters may engage in over-allotment, stabilizing transactions and syndicate covering transactions in accordance with Regulation M under the Securities Exchange Act of 1934. Over-allotment involves sales in excess of the offering size, which creates a short position for the underwriters. The underwriters may enter bids for, and purchase, securities in the open market in order to stabilize the price of the securities. Syndicate covering transactions involve purchases of the securities in the open market after the distribution has been completed in order to cover short positions. In addition, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions, or otherwise. These activities may cause the price of the securities to be higher than it would otherwise be. Those activities, if commenced, may be discontinued at any time.

Ordinarily, each issue of securities will be a new issue, and there will be no established trading market for any security other than our common stock prior to its original issue date. We may not list any particular series of securities on a securities exchange or quotation system. Any underwriters to whom or agents through whom the offered securities are sold for offering and sale may make a market in the offered securities. However, any underwriters or agents that make a

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market will not be obligated to do so and may stop doing so at any time without notice. We cannot assure you that there will be a liquid trading market for the offered securities.

If we offer securities in a subscription rights offering to our existing security holders, we may enter into a standby underwriting agreement with dealers, acting as standby underwriters. We may pay the standby underwriters a commitment fee for the securities they commit to purchase on a standby basis. If we do not enter into a standby underwriting arrangement, we may retain a dealer-manager to manage a subscription rights offering for us.

Under agreements entered into with us, underwriters and agents may be entitled to indemnification by us against certain civil liabilities, including liabilities under the Securities Act of 1933, or to contribution for payments the underwriters or agents may be required to make.

Although we expect that delivery of securities generally will be made against payment on or about the third business day following the date of any contract for sale, we may specify a shorter or longer settlement cycle in the applicable supplement. Under Rule 15c6-1 of the Securities Exchange Act of 1934, trades in the secondary market generally are required to settle in three business days, unless the parties to a trade expressly agree otherwise. Accordingly, if we have specified a longer settlement cycle in the applicable supplement for an offering of securities, purchasers who wish to trade those securities on the date of the contract for sale, or on one or more of the next succeeding business days as we will specify in the applicable supplement, will be required, by virtue of the fact that those securities will settle in more than T+3, to specify an alternative settlement cycle at the time of the trade to prevent a failed settlement and should consult their own advisors in connection with that election.

### **Market-Making Transactions by Affiliates**

Following the initial distribution of securities, our affiliates, including MLPF&S, may buy and sell the securities in secondary market transactions as part of their business as broker-dealers. Resales of this kind may occur in the open market or may be privately negotiated, at prevailing market prices at the time of resale or at related or negotiated prices. This prospectus and any related supplements may be used by one or more of our affiliates in connection with these market-making transactions to the extent permitted by applicable law. Our affiliates may act as principal or agent in these transactions.

The aggregate initial offering price specified on the cover of the applicable supplement will relate to the initial offering of securities not yet issued as of the date of this prospectus. This amount does not include any securities to be sold in market-making transactions. The securities to be sold in market-making transactions include securities issued after the date of this prospectus.

Information about the trade and settlement dates, as well as the purchase price, for a market-making transaction will be provided to the purchaser in a separate confirmation of sale.

*Unless we or our agent inform you in your confirmation of sale that the security is being purchased in its original offering and sale, you may assume that you are purchasing the security in a market-making transaction.*

### **Conflicts of Interest**

MLPF&S is our wholly-owned subsidiary, and unless otherwise set forth in the applicable supplement, we will receive the net proceeds of any offering in which MLPF&S participates as an

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underwriter, dealer or agent. The offer and sale of any securities by MLPF&S, or any of our other affiliates that is a member of the Financial Industry Regulatory Authority, Inc., or "FINRA," will comply with the requirements of FINRA Rule 5121 regarding a FINRA member firm's offer and sale of securities of an affiliate. As required by FINRA Rule 5121, any such offer and sale will not be made to any discretionary account without the prior approval of the customer.

The maximum commission or discount to be received by any FINRA member or independent broker-dealer will not be greater than 8% of the initial gross proceeds from the sale of any security being sold.

The underwriters, agents and their affiliates may engage in financial or other business transactions with us and our subsidiaries in the ordinary course of business.

In addition, in the ordinary course of their business activities, one or more of the underwriters, dealers or agents and/or their respective affiliates, may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. These investments and securities activities may involve securities and/or instruments of ours or our affiliates. These underwriters, dealers, agents, or their affiliates, that have a lending relationship with us routinely hedge their credit exposure to us consistent with their customary risk management policies. Typically, these parties would hedge such exposure to us by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the securities offered hereby. Any such short positions could adversely affect future trading prices of the securities offered hereby. These broker-dealers or their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.



## ERISA CONSIDERATIONS

A fiduciary of a pension, profit-sharing or other employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), should consider the fiduciary standards of ERISA in the context of the ERISA plan’s particular circumstances before authorizing an investment in the offered securities of Bank of America. Among other factors, the fiduciary should consider whether such an investment is in accordance with the documents governing the ERISA plan and whether the investment is appropriate for the ERISA plan in view of its overall investment policy and diversification of its portfolio. A fiduciary should also consider whether an investment in the offered securities may constitute a “prohibited transaction,” as described below.

Certain provisions of ERISA and the Code, prohibit employee benefit plans (as defined in Section 3(3) of ERISA) that are subject to Title I of ERISA, plans described in Section 4975(e)(1) of the Code (including, without limitation, individual retirement accounts and retirement plans covering self-employed persons), and entities whose underlying assets include plan assets by reason of a plan’s investment in such entities (including, without limitation, as applicable, insurance company general accounts) (collectively, “plans”), from engaging in certain transactions involving “plan assets” with parties that are “parties in interest” under ERISA or “disqualified persons” under the Code with respect to the plan or entity (referred to as “prohibited transactions”). Governmental and other plans that are not subject to ERISA or to the Code may be subject to similar restrictions under state, federal or local law.

Each of Bank of America Corporation and certain of its affiliates may be considered a “party in interest” or a “disqualified person” with respect to many plans on account of being a service provider. As a result, a prohibited transaction may arise if the securities are acquired by or on behalf of a plan unless those securities are acquired and held pursuant to an available exemption.

In addition, certain regulatory requirements applicable under ERISA could cause investments in certain offered securities by a plan (whether directly or indirectly) to be deemed to include not only the purchased securities but also an undivided interest in certain of the underlying assets of the relevant issuer. In the absence of an applicable exception to this general rule, the relevant issuer could be considered to hold a portion of the assets of the investing plan such that persons providing services in connection with such assets might be considered “parties in interest” or “disqualified persons” with respect to the investing plan. Moreover, any person exercising control or authority over such assets would be a fiduciary of such plan and therefore subject to the fiduciary responsibility provisions of Title I of ERISA and the prohibited transaction provisions referenced above. Additionally, transactions involving those assets undertaken by such service providers or fiduciaries could be deemed prohibited transactions under ERISA or the Code. Whether the underlying assets of an issuer of any offered securities would be considered to be the assets of any employee benefit plan investor will depend on the specific terms of such security, and a plan investor should look to the prospectus supplement for that particular security in order to make that determination.

The U.S. Department of Labor has issued five prohibited transaction class exemptions (“PTCEs”) that may provide exemptive relief for direct or indirect prohibited transactions resulting from or occurring in connection with the purchase or holding of these securities. Those class exemptions are PTCE 96-23 (for certain transactions determined by in-house asset managers), PTCE 95-60 (for certain transactions involving insurance company general accounts), PTCE 91-38 (for certain transactions involving bank collective investment funds), PTCE 90-1 (for certain transactions involving insurance company separate accounts) and PTCE 84-14 (for certain transactions determined by independent qualified professional asset managers). In addition, ERISA Section 408(b)(17) and Section 4975(d)(20) of the Code provide an exemption for the

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purchase and sale of securities and related lending transactions, provided that neither the issuer of the securities nor any of its affiliates has or exercises any discretionary authority or control or renders any investment advice with respect to the assets of any plan involved in the transaction and provided further that the plan receives no less, nor pays no more, than adequate consideration in connection with the transaction (the so-called "Service Provider Exemption"). There can be no assurance that any of these class or statutory exemptions will be available with respect to transactions involving these securities.

Accordingly, unless otherwise provided in connection with a particular offering of securities, offered securities may not be purchased, held or disposed of by any plan or any other person investing "plan assets" of any plan that is subject to the prohibited transaction rules of ERISA or Section 4975 of the Code or other similar law, unless one of the following exemptions (or a similar exemption or exception acceptable to us) applies to such purchase, holding, and disposition: the Service Provider Exemption, PTCE 96-23, PTCE 95-60, PTCE 91-38, PTCE 90-1, or PTCE 84-14. Therefore, unless otherwise provided in connection with a particular offering of securities, any purchaser of the offered securities or any interest therein will be deemed to have represented and warranted to us on each day including the date of its purchase of the offered securities through and including the date of disposition of such offered securities that:

- (a) it is not a plan subject to Title I of ERISA or Section 4975 of the Code and is not purchasing such securities or interest therein on behalf of, or with "plan assets" of, any such plan;
- (b) if it is a plan subject to Title I of ERISA or Section 4975 of the Code, its purchase, holding, and disposition of such securities are not and will not be prohibited because Bank of America is not a service provider as to it or such securities are exempted by the Service Provider Exemption or one or more of the following prohibited transaction exemptions: PTCE 96-23, 95-60, 91-38, 90-1 or 84-14; or
- (c) it is a governmental plan (as defined in section 3(32) of ERISA) or other plan that is not subject to the provisions of Title I of ERISA or Section 4975 of the Code and its purchase, holding, and disposition of such securities are not otherwise prohibited.

Moreover, any purchaser that is a plan or is acquiring the offered securities on behalf of a plan, including any fiduciary purchasing on behalf of a plan, will be deemed to have represented, in its corporate and its fiduciary capacity, by its purchase and holding of the offered securities that (a) neither we, the underwriter nor any of our respective affiliates (collectively the "Seller") is a "fiduciary" (under Section 3(21) of ERISA, or under any final or proposed regulations thereunder, or with respect to a governmental, church, or foreign plan under any similar laws) with respect to the acquisition, holding or disposition of the offered securities, or as a result of any exercise by the Seller of any rights in connection with the offered securities, (b) no advice provided by the Seller has formed a primary basis for any investment decision by or on behalf of such purchaser in connection with the offered securities and the transactions contemplated with respect to the securities, and (c) such purchaser recognizes and agrees that any communication from the Seller to the purchaser with respect to the offered securities is not intended by the Seller to be impartial investment advice and is rendered in its capacity as a seller of such offered securities and not a fiduciary to such purchaser.

*This discussion is a general summary of some of the rules which apply to ERISA plans and non-ERISA arrangements and their related investment vehicles as of the date of this prospectus. The rules governing investments by ERISA plans and non-ERISA arrangements change frequently, and we have no duty to, nor will we, inform you about any changes to such rules if and when they occur.*

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*This summary does not describe all of the rules or other considerations that may be relevant to the investment in the offered securities by such plans or arrangements. The description above is not, and should not be construed as, legal advice or a legal opinion.*

*Due to the complexity of these rules and the penalties imposed upon persons involved in prohibited transactions, it is important that any person considering the purchase of the offered securities with plan assets consult with its counsel regarding the consequences under ERISA and the Code, or other similar law, of the acquisition and ownership of offered securities and the availability of exemptive relief under the class exemptions listed above. The sale of the securities of Bank of America to a plan is in no respect a representation by Bank of America or the underwriters that such an investment meets all relevant legal requirements with respect to investments by plans generally or any particular plan, or that such an investment is appropriate for plans generally or any particular plan.*

### **WHERE YOU CAN FIND MORE INFORMATION**

We have filed a registration statement on Form S-3 with the SEC covering the securities to be offered and sold using this prospectus. You should refer to this registration statement and its exhibits for additional information about us. This prospectus summarizes material provisions of contracts and other documents that we refer you to. Because the prospectus may not contain all of the information that you may find important, you should review the full text of these documents, which we have included as exhibits to the registration statement.

We file annual, quarterly, and special reports, proxy statements and other information with the SEC. You may read and copy any document that we file with the SEC at the Public Reference Room of the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You also may inspect our filings over the Internet at the SEC's website, [www.sec.gov](http://www.sec.gov). The reports and other information we file with the SEC also are available at our website, [www.bankofamerica.com](http://www.bankofamerica.com). We have included the SEC's web address and our web address as inactive textual references only. Except as specifically incorporated by reference into this prospectus, information on those websites is not part of this prospectus.

You also can inspect reports and other information we file at the offices of The New York Stock Exchange LLC, 20 Broad Street, 17th Floor, New York, New York 10005.

The SEC allows us to incorporate by reference the information we file with it. This means that:

- incorporated documents are considered part of this prospectus;
- we can disclose important information to you by referring you to those documents; and
- information that we file with the SEC automatically will update and supersede this incorporated information and information in this prospectus.

We incorporate by reference the documents listed below which were filed with the SEC under the Securities Exchange Act of 1934:

- our annual report on Form 10-K for the year ended December 31, 2013;
- our quarterly reports on Form 10-Q for the periods ended March 31, 2014, June 30, 2014 and September 30, 2014;

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- our current reports on Form 8-K filed January 15, 2014, March 26, 2014 (two filings), April 16, 2014, April 28, 2014, May 7, 2014, May 27, 2014, June 17, 2014, July 16, 2014 (two filings), August 6, 2014, August 21, 2014, September 5, 2014, September 9, 2014, October 1, 2014, October 15, 2014, October 23, 2014, November 6, 2014, January 15, 2015, and January 27, 2015 (in each case, other than information that is furnished but deemed not to have been filed); and
- the description of our common stock which is contained in our registration statement filed under Section 12 of the Securities Exchange Act of 1934, as updated by our current report on Form 8-K filed April 20, 2009 and any other amendment or report filed for the purpose of updating such description.

We also incorporate by reference reports that we will file under Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934 on or after the date of this prospectus, but not any information that we may furnish but that is not deemed to be filed.

You should assume that the information appearing in this prospectus is accurate only as of the date of this prospectus. Our business, financial position, and results of operations may have changed since that date.

You may request a copy of any filings referred to above, at no cost, by contacting us at the following address or telephone number:

Bank of America Corporation  
Fixed Income Investor Relations  
100 North Tryon Street  
Charlotte, North Carolina 28255-0065  
1-866-607-1234

### **FORWARD-LOOKING STATEMENTS**

We have included or incorporated by reference in this prospectus and the applicable supplements statements that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. You may find these statements by looking for words such as “plan,” “believe,” “expect,” “intend,” “anticipate,” “estimate,” “project,” “potential,” “possible,” or other similar expressions, or future or conditional verbs such as “will,” “should,” “would,” and “could.”

All forward-looking statements, by their nature, are subject to risks and uncertainties. Our actual results may differ materially from those set forth in our forward-looking statements. As a large, international financial services company, we face risks that are inherent in the businesses and market places in which we operate. Information regarding important factors that could cause our future financial performance to vary from that described in our forward-looking statements is contained in our annual report on Form 10-K for the year ended December 31, 2013, which is incorporated by reference in this prospectus, under the captions “Item 1A. Risk Factors,” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as well as those discussed in our subsequent filings that are incorporated in this prospectus by reference. See “Where You Can Find More Information” above for information about how to obtain a copy of our annual report.

You should not place undue reliance on any forward-looking statements, which speak only as of the dates they are made.

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All subsequent written and oral forward-looking statements attributable to us or any person on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events.

### **LEGAL MATTERS**

The legality of the securities being registered will be passed upon for us by McGuireWoods LLP, Charlotte, North Carolina, and for the underwriters or agents by Morrison & Foerster LLP, New York, New York. Certain U.S. federal income tax matters will be passed upon for Bank of America by Morrison & Foerster LLP, New York, New York, special tax counsel to Bank of America. McGuireWoods LLP regularly performs legal services for us. Some members of McGuireWoods LLP performing those legal services own shares of our common stock.

### **EXPERTS**

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in the Report of Management on Internal Control Over Financial Reporting) incorporated in this prospectus by reference to our annual report on Form 10-K for the year ended December 31, 2013 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.



## Medium-Term Notes, Series L

We may offer from time to time our Bank of America Corporation Medium-Term Notes, Series L. The specific terms of any notes that we offer will be determined before each sale and will be described in a separate product supplement, index supplement and/or pricing supplement (each, a “supplement”). Terms may include:

- Priority: senior or subordinated
- Interest rate: notes may bear interest at fixed or floating rates, or may not bear any interest
- Base floating rates of interest:
  - funds rate
  - LIBOR
  - EURIBOR
  - prime rate
  - treasury rate
  - any other rate we specify
- Maturity: three months or more
- Indexed notes: principal, premium (if any), interest payments, or other amounts payable (if any) linked, either directly or indirectly, to the price or performance of one or more market measures, including securities, currencies or composite currencies, commodities, interest rates, stock or commodity indices, exchange traded funds, currency indices, consumer price indices, inflation indices, or any combination of the above
- Payments: U.S. dollars or any other currency that we specify in the applicable supplement

We may sell notes to the selling agents as principal for resale at varying or fixed offering prices or through the selling agents as agents using their best efforts on our behalf. We also may sell the notes directly to investors.

We may use this prospectus supplement and the accompanying prospectus in the initial sale of any notes. In addition, Merrill Lynch, Pierce, Fenner & Smith Incorporated, or any of our other affiliates, may use this prospectus supplement and the accompanying prospectus in a market-making transaction in any notes after their initial sale. Unless we or one of our selling agents informs you otherwise in the confirmation of sale, this prospectus supplement and the accompanying prospectus are being used in a market-making transaction.

Unless otherwise specified in the applicable supplement, we do not intend to list the notes on any securities exchange.

**Investing in the notes involves risks. See “[Risk Factors](#)” beginning on page S-5.**

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*Our notes are unsecured and are not savings accounts, deposits, or other obligations of a bank. Our notes are not guaranteed by Bank of America, N.A. or any other bank, are not insured by the Federal Deposit Insurance Corporation or any other governmental agency, and involve investment risks.*

*None of the Securities and Exchange Commission, any state securities commission, or any other regulatory body has approved or disapproved of these notes or passed upon the adequacy or accuracy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.*

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**BofA Merrill Lynch**

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**Prospectus Supplement to Prospectus dated February 24, 2015**

**February , 2015**

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## ABOUT THIS PROSPECTUS SUPPLEMENT

We have registered the notes on a registration statement on Form S-3 with the Securities and Exchange Commission under Registration No. 333-180488.

From time to time, we intend to use this prospectus supplement, the accompanying prospectus, and a related product supplement, index supplement and/or pricing supplement to offer the notes. We may refer to any pricing supplement as a “term sheet.” You should read each of these documents before investing in the notes.

This prospectus supplement describes additional terms of the notes and supplements the description of our debt securities contained in the accompanying prospectus. If the information in this prospectus supplement is inconsistent with the prospectus, this prospectus supplement will supersede the information in the prospectus.

This prospectus supplement and the accompanying prospectus do not constitute an offer to sell or the solicitation of an offer to buy the notes in any jurisdiction in which that offer or solicitation is unlawful. The distribution of this prospectus supplement and the accompanying prospectus and the offering of the notes in some jurisdictions may be restricted by law. If you have received this prospectus supplement and the accompanying prospectus, you should find out about and observe these restrictions. Persons outside the United States who come into possession of this prospectus supplement and the accompanying prospectus must inform themselves about and observe any restrictions relating to the distribution of this prospectus supplement and the accompanying prospectus and the offering of the notes outside of the United States. See “Supplemental Plan of Distribution (Conflicts of Interest).”

This prospectus supplement and the accompanying prospectus have been prepared on the basis that any offer of notes in any Member State of the European Economic Area which has implemented the Prospectus Directive (2003/71/EC) (and amendments thereto, including the Directive 2010/73/EU, to the extent implemented in the relevant Member State, the “Prospectus Directive”) (each, a “Relevant Member State”) will be made under an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of notes. Accordingly, any person making or intending to make an offer in that Relevant Member State of any notes which are contemplated in this prospectus supplement and the accompanying prospectus may only do so in circumstances in which no obligation arises for us or any of the selling agents to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer. Neither we nor the selling agents have authorized, and neither we nor they authorize, the making of any offer of notes in circumstances in which an obligation arises for us or any selling agent to publish or supplement a prospectus for the purposes of the Prospectus Directive in relation to such offer. Neither this prospectus supplement nor the accompanying prospectus constitutes an approved prospectus for the purposes of the Prospective Directive.

For each offering of notes, we will issue a product supplement, index supplement, and/or a pricing supplement which will contain additional terms of the offering and a specific description of the notes being offered. A supplement also may add, update, or change information in this prospectus supplement or the accompanying prospectus, including provisions describing the calculation of the amounts due under the notes and the method of making payments under the terms of a note. We will state in the applicable supplement the interest rate or interest rate basis or formula, issue price, any relevant market measures, the maturity date, interest payment dates, redemption, or repayment provisions, if any, and other relevant terms and conditions for each note



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at the time of issuance. A supplement also may include a discussion of any risk factors or other special additional considerations that apply to a particular type of note. Each applicable supplement can be quite detailed and always should be read carefully.

Any term that is used, but not defined, in this prospectus supplement has the meaning set forth in the accompanying prospectus.

## RISK FACTORS

Your investment in the notes involves significant risks. Your decision to purchase the notes should be made only after carefully considering the risks of an investment in the notes, including those discussed below, in the accompanying prospectus beginning on page 9, and in the relevant supplement(s) for the specific notes, with your advisors in light of your particular circumstances. The notes are not an appropriate investment for you if you are not knowledgeable about significant elements of the notes or financial matters in general. For information regarding risks and uncertainties that may materially affect our business and results, please refer to the information under the captions “Item 1A. Risk Factors” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our annual report on Form 10-K for the year ended December 31, 2013, which is incorporated by reference in the accompanying prospectus, as well as those risks and uncertainties discussed in our subsequent filings that are incorporated by reference in the accompanying prospectus. You should also review the risk factors that will be set forth in other documents that we will file after the date of this prospectus supplement.

### **The market value of the notes may be less than the principal amount of the notes.**

The market for, and market value of, the notes may be affected by a number of factors. These factors include:

- the method of calculating the principal, premium, if any, interest or other amounts payable, if any, on the notes;
- the time remaining to maturity of the notes;
- the aggregate amount outstanding of the relevant notes;
- any redemption or repayment features of the notes;
- the level, direction, and volatility of market interest rates generally;
- general economic conditions of the capital markets in the United States;
- geopolitical conditions and other financial, political, regulatory, and judicial events that affect the stock markets generally; and
- any market-making activities with respect to the notes.

Often, the only way to liquidate your investment in the notes prior to maturity will be to sell the notes. At that time, there may be a very illiquid market for the notes or no market at all. For indexed notes that have specific investment objectives or strategies, the applicable trading market may be more limited, and the price may be more volatile, than for other notes. The market value of indexed notes may be adversely affected by the complexity of the payout formula and volatility of the applicable market measure, including any dividend rates or yields of other securities or financial instruments that relate to the indexed notes. Moreover, the market value of indexed notes could be adversely affected by changes in the amount of outstanding debt, equity, or other securities linked to the applicable market measures, assets or formula applicable to those notes.

### **Holders of indexed notes are subject to important risks that are not associated with more conventional debt securities.**

If you invest in indexed notes, you will be subject to significant risks not associated with conventional fixed-rate or floating-rate debt securities. These risks include the possibility that the

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applicable market measures may be subject to fluctuations, and the possibility that you will receive a lower, or no, amount of principal, premium, or interest, and at different times, than expected. In recent years, many securities, currencies, commodities, interest rates, indices, and other market measures have experienced volatility, and this volatility may be expected in the future. However, past experience is not necessarily indicative of what may occur in the future. We have no control over a number of matters, including economic, financial, and political events, that are important in determining the existence, magnitude, and longevity of market volatility and other risks and their impact on the value of, or payments made on, the indexed notes. Further, you should assume that there is no statutory, judicial, or administrative authority that addresses directly the characterization of some types of indexed notes or similar instruments for U.S. federal or other income tax purposes. As a result, the income tax consequences of an investment in indexed notes are not certain. In considering whether to purchase indexed notes, you should be aware that the calculation of amounts payable on indexed notes may involve reference to a market measure determined by one of our affiliates or prices or values that are published solely by third parties or entities which are not regulated by the laws of the United States. Additional risks that you should consider in connection with an investment in indexed notes are set forth in the applicable supplement(s) for the notes.

### **Our obligations under subordinated notes will be subordinated.**

Holders of our subordinated notes should recognize that contractual provisions in the Subordinated Indenture may prohibit us from making payments on the subordinated notes. The subordinated notes are unsecured and subordinate and junior in right of payment to all of our senior indebtedness (as defined in the Subordinated Indenture), to the extent and in the manner provided in the Subordinated Indenture. In addition, the subordinated notes may be fully subordinated to interests held by the U.S. government in the event we enter into a receivership, insolvency, liquidation or similar proceedings. For additional information regarding the subordination provisions applicable to the subordinated notes, see “Description of Debt Securities — Subordination” in the attached prospectus.

### **Our subordinated notes are subject to limited rights of acceleration.**

Payment of our subordinated notes may be accelerated only in the event of our voluntary or involuntary bankruptcy under federal bankruptcy laws (and, in the case of our involuntary bankruptcy, continuing for a period of 60 days). If you purchase any subordinated notes, you will have no right to accelerate the payment of the subordinated notes if we fail to pay interest on such notes or if we fail in the performance of any of our other obligations under such notes.

### **Floating-rate notes bear additional risks.**

If your notes bear interest at a floating rate, there will be additional significant risks not associated with a conventional fixed-rate debt security. These risks include fluctuation of the interest rates and the possibility that you will receive an amount of interest that is lower than expected. We have no control over a number of matters, including economic, financial, and political events, that are important in determining the existence, magnitude, and longevity of market volatility and other risks and their impact on the value of, or payments made on, your floating-rate notes. In recent years, interest rates have been volatile, and that volatility may be expected in the future.

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**Our hedging activities may affect your return at maturity and the market value of the notes.**

At any time, we or our affiliates may engage in hedging activities relating to the notes. This hedging activity, in turn, may increase or decrease the market value of the notes. In addition, we or our affiliates may acquire a long or short position in the notes from time to time. All or a portion of these positions may be liquidated at or about the time of maturity of the notes. The aggregate amount and the composition of these positions are likely to vary over time. We have no reason to believe that any of our hedging activities will have a material effect on the notes, either directly or indirectly, by impacting the value of the notes. However, we cannot assure you that our activities or affiliates' activities will not affect these values.

**Our hedging and trading activities may create conflicts of interest with you**

From time to time during the term of each series of notes and in connection with the determination of the payments on the notes, we or our affiliates may enter into additional hedging transactions or adjust or close out existing hedging transactions. We or our affiliates also may enter into hedging transactions relating to other notes or instruments that we issue, some of which may have returns calculated in a manner related to that of a particular series of notes. We or our affiliates will price these hedging transactions with the intent to realize a profit, considering the risks inherent in these hedging activities, whether the value of the notes increases or decreases. However, these hedging activities may result in a profit that is more or less than initially expected, or could result in a loss.

We or one or more of our affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, may engage in trading activities that are not for your account or on your behalf. These trading activities may present a conflict of interest between your interest in the notes and the interests we and our affiliates may have in our proprietary accounts, in facilitating transactions, including block trades, for our other customers, and in accounts under our management. These trading activities, if they influence the market measure or other reference asset (if any) for the notes or secondary trading (if any) in the notes, could be adverse to your interests as a beneficial owner of the notes.

**DESCRIPTION OF THE NOTES**

This section describes the general terms and conditions of the notes, which may be senior or subordinated medium-term notes. This section supplements, and should be read together with, the general description of our debt securities included in "Description of Debt Securities" in the accompanying prospectus. If there is any inconsistency between the information in this prospectus supplement and the accompanying prospectus, you should rely on the information in this prospectus supplement.

We will describe the particular terms of the notes we sell in a separate supplement. The terms and conditions stated in this section will apply to each note unless the note or the applicable supplement indicates otherwise.

**General**

The following summary of the terms of the notes and the indentures is not complete and is qualified in its entirety by reference to the actual notes and the specific provisions of the Senior Indenture and the Subordinated Indenture, as applicable.

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We will issue the notes as part of a series of debt securities under the Senior Indenture or the Subordinated Indenture, as applicable, which are exhibits to our registration statement and are contracts between us and The Bank of New York Mellon Trust Company, N.A., as successor trustee. In this prospectus supplement, we refer to The Bank of New York Mellon Trust Company, N.A., as the “trustee,” and we refer to the Senior Indenture and the Subordinated Indenture individually as the “Indenture” and together as the “Indentures.”

The Indentures are subject to, and governed by, the Trust Indenture Act of 1939. We, the selling agents, and the depository, in the ordinary course of our respective businesses, have conducted and may conduct business with the trustee or its affiliates. See “Description of Debt Securities—The Indentures” in the accompanying prospectus for more information about the Indentures and the functions of the trustee.

The notes are our direct unsecured obligations and are not obligations of our subsidiaries. The notes are being offered on a continuous basis. There is no limit under our registration statement on the total initial public offering price or aggregate principal amount of the Senior and Subordinated Medium-Term Notes, Series L, that may be offered using this prospectus supplement. We may issue other debt securities under the Indentures from time to time in one or more series up to the aggregate principal amount of the then-existing grant of authority by our board of directors.

Unless otherwise provided in the applicable supplement, the minimum denomination of the notes will be \$1,000 and any larger amount that is a whole multiple of \$1,000 (or the equivalent in other currencies). We may also issue the notes in units of \$10.

### **Types of Notes**

**Fixed-Rate Notes.** We may issue notes that bear interest at a fixed rate described in the applicable pricing supplement, which we refer to as “fixed-rate notes.” We also may issue fixed-rate notes that combine principal and interest payments in installment payments over the life of the note, which we refer to as “amortizing notes.” For more information on fixed-rate notes and amortizing notes, see “Description of Debt Securities — Fixed-Rate Notes” in the accompanying prospectus.

**Floating-Rate Notes.** We may issue notes that bear interest at a floating rate of interest determined by reference to one or more base interest rates, or by reference to one or more interest rate formulae, described in the applicable supplement, which we refer to as “floating-rate notes.” In some cases, the interest rate of a floating-rate note also may be adjusted by adding or subtracting a spread or by multiplying the interest rate by a spread multiplier. A floating-rate note also may be subject to a maximum interest rate limit, or ceiling, and/or a minimum interest rate limit, or floor, on the interest that may accrue during any interest period. For more information on floating-rate notes, including a description of the manner in which interest payments will be calculated, see “Description of Debt Securities — Floating-Rate Notes” in the accompanying prospectus.

**Indexed Notes.** We may issue notes that provide that the rate of return, including the principal, premium (if any), interest, or other amounts payable (if any), is determined by reference, either directly or indirectly, to the price or performance of one or more securities, commodities, currencies or composite currencies, interest rates, stock or commodity indices, exchange traded funds, currency indices, consumer price indices, inflation indices or other market measures, or any combination of the above, in each case as specified in the applicable supplement. We refer to these notes as “indexed notes.”

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If you purchase an indexed note, you may receive an amount at maturity that is greater than or less than the face amount of your note, depending upon the formula used to determine the amount payable and the relative value at maturity of the market measure to which your indexed note is linked. We expect that the value of the applicable market measure will fluctuate over time.

An indexed note may provide either for cash settlement or for physical settlement by delivery of the relevant asset. An indexed note also may provide that the form of settlement may be determined at our option or the holder's option. Some indexed notes may be convertible, exercisable, or exchangeable prior to maturity, at our option or the holder's option, for the relevant asset or the cash value of the relevant asset.

We will specify in the applicable supplement the method for determining the principal, premium (if any), interest, or other amounts payable (if any) in respect of particular indexed notes, as well as certain historical or other information with respect to the specified index or other market measure, specific risk factors relating to that particular type of indexed note, and tax considerations associated with an investment in the indexed notes.

A supplement for any particular indexed notes also will identify the calculation agent that will calculate the amounts payable with respect to the indexed note. The calculation agent may be one of our affiliates, including Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), Merrill Lynch Commodities, Inc., or Merrill Lynch Capital Services, Inc. We may appoint different calculation agents from time to time after the original issue date of an indexed note without your consent and without notifying you of the change. Absent manifest error, all determinations of the calculation agent will be final and binding on you, the selling agents, and us. Upon request of the holder of an indexed note, and to the extent set forth in the applicable supplement, the calculation agent will provide, if applicable, information relating to the current principal, premium (if any), rate of interest, interest payable, or other amounts payable (if any) in connection with that indexed note.

For more information about indexed notes, see "Description of Debt Securities — Indexed Notes" in the accompanying prospectus.

**Original Issue Discount Notes.** We may issue notes at a price lower than their principal amount or lower than their minimum guaranteed repayment amount at maturity, which we refer to as "original issue discount notes." Original issue discount notes may be fixed-rate, floating-rate, or indexed notes and may bear no interest ("zero coupon notes") or may bear interest at a rate that is below market rates at the time of issuance. For more information on original issue discount notes, see "Description of Debt Securities — Original Issue Discount Notes" in the accompanying prospectus.

**Specific Terms of the Notes.** The applicable supplement(s) for each offering of notes will contain additional terms of the offering and a specific description of those notes, including:

- the specific designation of the notes;
- the issue price;
- the principal amount;
- the issue date;
- the maturity date, and any terms providing for the extension or postponement of the maturity date;

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- the denominations or minimum denominations, if other than \$1,000;
- the currency or currencies, if not U.S. dollars, in which payments will be made on the notes;
- whether the note is a fixed-rate note, a floating-rate note, or an indexed note;
- whether the note is senior or subordinated;
- the method of determining and paying interest, including any applicable interest rate basis or bases, any initial interest rate or the method for determining any initial interest rate, any interest reset dates, any payment dates, any index maturity, and any maximum or minimum rate of interest, as applicable;
- any spread or spread multiplier applicable to a floating-rate note or an indexed note;
- the method for the calculation and payment of principal, premium (if any), interest, and other amounts payable (if any);
- for exchangeable notes, the securities, or other property for which the notes may be exchanged, the rate of exchange, whether the notes are exchangeable at your option or our option, and other terms of the exchangeable notes;
- if applicable, the circumstances under which the note may be redeemed at our option or repaid at your option prior to the maturity date set forth on the face of the note, including any repayment date, redemption commencement date, redemption price, and redemption period;
- if applicable, the circumstances under which the maturity date set forth on the face of the note may be extended at our option or renewed at your option, including the extension or renewal periods and the final maturity date;
- whether the notes will be listed on any stock exchange; and
- if applicable, any other material terms of the note which are different from those described in this prospectus supplement and the accompanying prospectus.

Each note will mature on a business day (as defined in the accompanying prospectus) three or more months from the issue date. Unless we specify otherwise in the supplement, the record dates for any interest payments for book-entry notes denominated in U.S. dollars will be one business day (in Charlotte, North Carolina and New York City) prior to the applicable payment date, and for any book-entry notes denominated in a currency other than U.S. dollars will be the fifteenth calendar day preceding the applicable payment date.

Unless we specify otherwise in the applicable supplement, the notes will not be entitled to the benefit of any sinking fund.

### **Payment of Principal, Interest, and Other Amounts Due**

***Paying Agents.*** Unless otherwise provided in the applicable pricing supplement, the trustee will act as our paying agent, security registrar, and transfer agent with respect to the notes through the trustee's corporate trust office. That office is currently located at 101 Barclay Street, New York, New York 10286. If specified in the applicable pricing supplement, with respect to some of our notes, including notes denominated in euro, The Bank of New York Mellon will act as the

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London paying agent (the “London paying agent”) through its London branch, which is located at the 48th Floor, One Canada Square, London, E14 5AL. At any time, we may rescind the designation of a paying agent, appoint a successor or an additional paying agent or different paying agent (including the London paying agent), or approve a change in the office through which any paying agent acts in accordance with the applicable Indenture. In addition, we may decide to act as our own paying agent with respect to some or all of the notes, and the paying agent may resign.

**Calculation Agents.** The trustee or the London paying agent also will act as the calculation agent for floating-rate notes, unless otherwise specified in the applicable pricing supplement. We will identify the calculation agent for any indexed notes in the applicable pricing supplement. The calculation agent will be responsible for calculating the interest rate, reference rates, principal, premium (if any), interest, or other amounts payable (if any) applicable to the floating-rate notes or indexed notes, as the case may be, and for certain other related matters. The calculation agent, at the request of the holder of any floating-rate note, will provide the interest rate then in effect and, if already determined, the interest rate that is to take effect on the next interest reset date, as described below, for the floating-rate note. At the request of the holder of any floating-rate note that is an indexed note, and to the extent set forth in the applicable supplement, the calculation agent will provide the reference rate or formula then in effect. We may replace any calculation agent or elect to act as the calculation agent for some or all of the notes, and the calculation agent may resign.

**Manner of Payment.** Unless otherwise stated in the applicable pricing supplement, we will pay principal, premium (if any), interest, and other amounts payable (if any) on the notes in book-entry form in accordance with arrangements then in place between the applicable paying agent and the applicable depository. Unless otherwise stated in the applicable pricing supplement, we will pay any interest on notes in certificated form on each interest payment date other than the maturity date by check mailed to holders of the notes on the applicable record date at the address appearing on our records. Unless otherwise stated in the applicable pricing supplement, we will pay any principal, premium (if any), interest, and other amounts payable (if any) at the maturity date of a note in certificated form by wire transfer of immediately available funds upon surrender of the note at the corporate trust office of the trustee or the London paying agent, as applicable.

**Currency Conversions and Payments on Notes Denominated in Currencies Other than U.S. Dollars.** For any notes denominated in a currency other than U.S. dollars, the initial investors will be required to pay for the notes in that foreign currency. The applicable selling agent may arrange for the conversion of U.S. dollars into the applicable foreign currency to facilitate payment for the notes by U.S. purchasers electing to make the initial payment in U.S. dollars. Any such conversion will be made by that selling agent on the terms and subject to the conditions, limitations, and charges as it may establish from time to time in accordance with its regular foreign exchange procedures, and subject to United States laws and regulations. All costs of any such conversion for the initial purchase of the notes will be borne by the initial investors using those conversion arrangements.

We generally will pay principal, premium (if any), interest, and other amounts payable (if any) on notes denominated in a currency other than U.S. dollars in the applicable foreign currency. Holders of beneficial interests in notes through a participant in The Depository Trust Company, or “DTC,” will receive payments in U.S. dollars, unless they elect to receive payments on those notes in the applicable foreign currency. If a holder through DTC does not make an election to receive payments in the applicable foreign currency, the exchange rate agent for the relevant notes, which will be named in the applicable pricing supplement, will convert payments to that holder into U.S. dollars, and all costs of those conversions will be borne by that holder by deduction from the applicable payments.



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For holders not electing payment in the applicable foreign currency, the U.S. dollar amount of any payment will be the amount of the applicable foreign currency otherwise payable, converted into U.S. dollars at the applicable exchange rate prevailing as of 11:00 a.m. (New York City time) on the second business day prior to the relevant payment dates, less any costs incurred by the exchange rate agent for that conversion. The costs of those conversions will be shared pro rata among the holders of beneficial interests in the applicable global notes receiving U.S. dollar payments in the proportion of their respective holdings. The exchange rate agent will make those conversions in accordance with the terms of the applicable note and with any applicable arrangements between us and the exchange rate agent.

If an exchange rate quotation is unavailable from the entity or source ordinarily used by the exchange rate agent in the normal course of business, the exchange rate agent will obtain a quotation from a leading foreign exchange bank in New York City, which may be an affiliate of the exchange rate agent or another entity selected by the exchange rate agent for that purpose after consultation with us. If no quotation from a leading foreign exchange bank is available, payment will be made in the applicable foreign currency to the account or accounts specified by DTC to the exchange rate agent, unless the applicable foreign currency is unavailable due to the imposition of exchange controls or other circumstances beyond our control. If payment on a note is required to be made in a currency other than U.S. dollars and that currency is unavailable due to the imposition of exchange controls or other circumstances beyond our control, or is no longer used by the government of the relevant country or for the settlement of transactions by public institutions of or within the international banking community (and is not replaced by another currency), then all payments on that note will be made in U.S. dollars on the basis of the most recently available market exchange rate for the applicable foreign currency. Any payment on a note so made in U.S. dollars will not constitute an event of default under the applicable notes.

The holder of a beneficial interest in global notes held through a DTC participant may elect to receive payments on those notes in a foreign currency by notifying the DTC participant through which it holds its beneficial interests on or prior to the fifteenth business day prior to the record date for the applicable notes of (1) that holder's election to receive all or a portion of the payment in the applicable foreign currency and (2) wire transfer instructions to an account for the applicable foreign currency outside the United States. DTC must be notified of that election and wire transfer instructions (a) on or prior to the fifth business day after the record date for any payment of interest and (b) on or prior to the tenth business day prior to the date for any payment of principal. DTC will notify the trustee of the election and wire transfer instructions (1) on or prior to 5:00 p.m. New York City time on the fifth business day after the record date for any payment of interest and (2) on or prior to 5:00 p.m. New York City time on the tenth business day prior to the date for any payment of principal. If complete instructions are forwarded to and received by DTC through a DTC participant and forwarded by DTC to the trustee and received on or prior to the dates described above, the holder will receive payment in the applicable foreign currency outside DTC; otherwise, only U.S. dollar payments will be made by the trustee to DTC.

For purposes of the above discussion about currency conversions and payments on notes denominated in a foreign currency, the term "business day" means any weekday that is not a legal holiday in New York, New York or Charlotte, North Carolina and is not a day on which banking institutions in those cities are authorized or required by law or regulation to be closed.

For information regarding risks associated with foreign currencies and exchange rates, see "Risk Factors — Currency Risks" in the accompanying prospectus.

**Payment of Additional Amounts.** If we so specify in the applicable pricing supplement, additional amounts will be payable to a beneficial holder of notes that is a non-U.S. person. Our obligation to pay additional amounts to non-U.S. persons is subject to the limitations described

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under “Description of Debt Securities — Payment of Additional Amounts” in the accompanying prospectus. If we so specify in the applicable pricing supplement, we may redeem the notes in whole, but not in part, at any time before maturity if we have or will become obligated to pay additional amounts as a result of a change in, or amendment to, U.S. tax laws or regulations, as described under “Description of Debt Securities — Redemption for Tax Reasons” in the accompanying prospectus.

For more information about payment procedures, including payments in a currency other than U.S. dollars, see “Description of Debt Securities — Payment of Principal, Interest, and Other Amounts Due” in the accompanying prospectus.

### **Ranking**

Because we are a holding company, our right to participate in any distribution of assets of any subsidiary upon such subsidiary’s liquidation or reorganization or otherwise is subject to the prior claims of creditors of that subsidiary, except to the extent we may ourselves be recognized as a creditor of that subsidiary. Accordingly, our obligations under senior notes or subordinated notes will be structurally subordinated to all existing and future liabilities of our subsidiaries, and claimants should look only to our assets for payments.

**Senior Notes.** The senior notes will be unsecured and will rank equally with all our other unsecured and unsubordinated obligations from time to time outstanding, except obligations, including deposit liabilities, that are subject to any priorities or preferences by law.

The Senior Indenture and the senior notes do not contain any limitation on the amount of obligations that we may incur in the future.

**Subordinated Notes.** Our indebtedness evidenced by the subordinated notes, including the principal, premium (if any), interest, and other amounts payable (if any) will be subordinate and junior in right of payment to all of our senior indebtedness from time to time outstanding. Payment of principal of our subordinated indebtedness, including any subordinated notes, may not be accelerated if there is a default in the payment of amounts due under, or a default in any of our other covenants applicable to, our subordinated indebtedness.

The Subordinated Indenture and the subordinated notes do not contain any limitation on the amount of obligations ranking senior to the subordinated notes, or the amount of obligations ranking equally with the subordinated notes, that we may incur in the future.

For more information about our subordinated notes, see “Description of Debt Securities — Subordination” in the accompanying prospectus.

### **Redemption**

The applicable supplement will indicate whether we have the option to redeem notes prior to their maturity date. If we may redeem the notes prior to maturity, the applicable supplement will indicate the redemption price and method for redemption. See also “Description of Debt Securities — Redemption” in the accompanying prospectus.

### **Repayment**

The applicable supplement will indicate whether the notes can be repaid at the holder’s option prior to their maturity date. If the notes may be repaid prior to maturity, the applicable supplement will indicate the amount at which we will repay the notes and the procedure for repayment.

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### **Reopenings**

We have the ability to “reopen,” or increase after the issuance date, the principal amount of a particular tranche or series of our notes without notice to the holders of existing notes by selling additional notes having the same terms, provided that such additional notes shall be fungible for U.S. federal income tax purposes. However, any new notes of this kind may have a different offering price and may begin to bear interest at a different date.

### **Extendible/Renewable Notes**

We may issue notes for which the maturity date may be extended at our option or renewed at the option of the holder for one or more specified periods, up to but not beyond the final maturity date stated in the note. The specific terms of and any additional considerations relating to extendible or renewable notes will be set forth in the applicable supplement.

### **Other Provisions**

Any provisions with respect to the determination of an interest rate basis, the specification of interest rate basis, the calculation of the applicable interest rate, the amounts payable at maturity, interest payment dates, or any other related matters for a particular tranche of notes, may be modified as described in the applicable supplement.

### **Repurchase**

We, or our affiliates, may purchase at any time our notes by tender, in the open market at prevailing prices or in private transactions at negotiated prices. If we purchase notes in this manner, we have the discretion to hold, resell, or cancel any repurchased notes.

### **Form, Exchange, Registration, and Transfer of Notes**

We will issue each note in book-entry only form. This means that we will not issue certificated notes to each beneficial owner. Instead, the notes will be in the form of a global note or a master global note, in fully registered form, registered and held in the name of the applicable depository or a nominee of that depository. For notes denominated in a currency other than U.S. dollars, the notes may be issued in the form of two global notes, each in fully registered form, one of which will be deposited with DTC, or its custodian, and one of which will be deposited with a common depository for Euroclear Bank SA/NV (“Euroclear”) and/or Clearstream Banking, société anonyme, Luxembourg (“Clearstream”). Unless we specify otherwise in the applicable pricing supplement, the depository for the notes will be DTC. DTC, Euroclear, and Clearstream, as depositories for global securities, and some of their policies and procedures are described under “Registration and Settlement — Depositories for Global Securities” in the accompanying prospectus. For more information about book-entry only notes and the procedures for registration, settlement, exchange, and transfer of book-entry only notes, see “Description of Debt Securities — Form and Denomination of Debt Securities” and “Registration and Settlement” in the accompanying prospectus.

If we ever issue notes in certificated form, unless we specify otherwise in the applicable supplement, those notes will be in registered form, and the exchange, registration, or transfer of those notes will be governed by the applicable Indenture and the procedures described under “Description of Debt Securities — Exchange, Registration, and Transfer” and “Registration and Settlement — Registration, Transfer, and Payment of Certificated Securities” in the accompanying prospectus.

## U.S. FEDERAL INCOME TAX CONSIDERATIONS

For the material U.S. federal income tax considerations of the acquisition, ownership and disposition of certain notes, see “U.S. Federal Income Tax Considerations” on page 96 of the accompanying prospectus and the subsection “Taxation of Debt Securities” of that section. Special U.S. federal income tax rules are applicable to certain types of notes we may issue under this prospectus supplement. The material U.S. federal income tax considerations with respect to any notes we issue, and which are not addressed in the accompanying prospectus, will be discussed in the applicable supplement.

You should consult with your own tax advisor before investing in the notes.

## SUPPLEMENTAL PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)

We are offering the notes for sale on a continuing basis through the selling agents. The selling agents may act either on a principal basis or on an agency basis. We may offer the notes at varying prices relating to prevailing market prices at the time of resale, as determined by the selling agents, or, if so specified in the applicable pricing supplement, for resale at a fixed public offering price. The applicable pricing supplement will set forth the initial price for the notes, or whether they will be sold at varying prices.

If we sell notes on an agency basis, we will pay a commission to the selling agent to be negotiated at the time of sale. The commission will be determined at the time of sale and will be specified in the applicable pricing supplement. Each selling agent will use its reasonable best efforts when we request it to solicit purchases of the notes as our agent.

Unless otherwise agreed and specified in the applicable pricing supplement, if notes are sold to a selling agent acting as principal, for its own account, or for resale to one or more investors or other purchasers, including other broker-dealers, then any notes so sold will be purchased by that selling agent at a price equal to 100% of the principal amount of the notes less a commission that will be a percentage of the principal amount determined as described above. Notes sold in this manner may be resold by the selling agent to investors and other purchasers from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale, or the notes may be resold to other dealers for resale to investors. The selling agents may allow any portion of the discount received in connection with the purchase from us to the dealers, but the discount allowed to any dealer will not be in excess of the discount to be received by the selling agent from us. After the initial public offering of notes, the selling agent may change the public offering price or the discount allowed to dealers.

We also may sell notes directly to investors, without the involvement of any selling agent. In this case, we would not be obligated to pay any commission or discount in connection with the sale, and we would receive 100% of the principal amount of the notes so sold, unless otherwise specified in the applicable pricing supplement.

We will name any selling agents or other persons through which we sell any notes, as well as any commissions or discounts payable to those selling agents or other persons, in the applicable pricing supplement. As of the date of this prospectus supplement, our selling agent is MLPF&S. MLPF&S has entered into a distribution agreement with us that describes the offering of notes by them as our agent and as our principal. We also may accept offers to purchase notes through additional selling agents on substantially the same terms and conditions, including commissions, as would apply to purchases through MLPF&S under the distribution agreement. If a selling agent purchases notes as principal, that selling agent usually will be required to enter into a separate

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purchase agreement for the notes, and may be referred to in that purchase agreement and the applicable pricing supplement, along with any other selling agents, as “underwriters.”

We have the right to withdraw, cancel, or modify the offer made by this prospectus supplement without notice. We will have the sole right to accept offers to purchase notes, and we, in our absolute discretion, may reject any proposed purchase of notes in whole or in part. Each selling agent will have the right, in its reasonable discretion, to reject in whole or in part any proposed purchase of notes through that selling agent.

Any selling agent participating in the distribution of the notes may be considered to be an underwriter, as that term is defined in the Securities Act. We have agreed to indemnify each selling agent and certain other persons against certain liabilities, including liabilities under the Securities Act, or to contribute to payments that the selling agents may be required to make. We also have agreed to reimburse the selling agents for certain expenses.

The notes will not have an established trading market when issued, and we do not intend to list the notes on any securities exchange, unless otherwise specified in the applicable pricing supplement. Any selling agent may purchase and sell notes in the secondary market from time to time. However, no selling agent is obligated to do so, and any selling agent may discontinue making a market in the notes at any time without notice. There is no assurance that there will be a secondary market for any of the notes.

To facilitate offerings of the notes by a selling agent that purchases notes as principal, and in accordance with industry practice, selling agents may engage in transactions that stabilize, maintain, or otherwise affect the market price of the notes. Those transactions may include over-allotment, entering stabilizing bids, effecting syndicate-covering transactions, and imposing penalty bids to reclaim selling concessions allowed to a member of the syndicate or to a dealer, as follows:

- An over-allotment in connection with an offering creates a short position in the offered securities for the selling agent’s own account.
- A selling agent may place a stabilizing bid to purchase a note for the purpose of pegging, fixing, or maintaining the price of that note.
- Selling agents may engage in syndicate-covering transactions to cover over-allotments or to stabilize the price of the notes by bidding for, and purchasing, the notes or any other securities in the open market in order to reduce a short position created in connection with the offering.
- The selling agent that serves as syndicate manager may impose a penalty bid on a syndicate member to reclaim a selling concession in connection with an offering when offered securities originally sold by the syndicate member are purchased in syndicate-covering transactions, in stabilization transactions, or otherwise.

Any of these activities may stabilize or maintain the market price of the securities above independent market levels. The selling agents are not required to engage in these activities, and may end any of these activities at any time.

MLPF&S, a selling agent and one of our affiliates, is a broker-dealer and member of the Financial Industry Regulatory Authority, Inc., or “FINRA.” Each initial offering and any remarketing of notes involving any of our broker-dealer affiliates, including MLPF&S, will be conducted in compliance with the requirements of FINRA Rule 5121 regarding a FINRA member

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firm's offer and sale of securities of an affiliate. None of our broker-dealer affiliates that is a FINRA member will execute a transaction in the notes in a discretionary account without specific prior written approval of the customer, see "Plan of Distribution (Conflicts of Interest)—Conflicts of Interest" in the accompanying prospectus.

Following the initial distribution of any notes, our affiliates, including MLPF&S, may buy and sell the notes in market-making transactions as part of their business as a broker-dealer. Resales of this kind may occur in the open market or may be privately negotiated at prevailing market prices at the time of sale. Notes may be sold in connection with a remarketing after their purchase by one or more firms. Any of our affiliates may act as principal or agent in these transactions.

This prospectus supplement may be used by one or more of our affiliates in connection with offers and sales related to market-making transactions in the notes, including block positioning and block trades, to the extent permitted by applicable law. Any of our affiliates may act as principal or agent in these transactions.

Notes sold in market-making transactions include notes issued after the date of this prospectus supplement as well as previously-issued securities. Information about the trade and settlement dates, as well as the purchase price, for a market-making transaction will be provided to the purchaser in a separate confirmation of sale. Unless we or one of our selling agents informs you in the confirmation of sale that notes are being purchased in an original offering and sale, you may assume that you are purchasing the notes in a market-making transaction.

MLPF&S and other selling agents that we may name in the future, or their affiliates, have engaged, and may in the future engage, in investment banking, commercial banking, and financial advisory transactions with us and our affiliates. These transactions are in the ordinary course of business for the selling agents and us and our respective affiliates. In these transactions, the selling agents or their affiliates receive customary fees and expenses.

Although we expect that delivery of the notes generally will be made against payment on or about the third business day following the date of any contract for sale, we may specify a shorter or a longer settlement cycle in the applicable pricing supplement. Under Rule 15c6-1 of the Securities Exchange Act of 1934, trades in the secondary market generally are required to settle in three business days, unless the parties to a trade expressly agree otherwise. Accordingly, if we have specified a longer settlement cycle in the applicable pricing supplement for an offering of securities, purchasers who wish to trade those securities on the date of the contract for sale, or on one or more of the next succeeding business days as we will specify in the applicable pricing supplement, will be required, by virtue of the fact that those securities will settle in more than T+3, to specify an alternative settlement cycle at the time of the trade to prevent a failed settlement and should consult their own advisors in connection with that election.

### **Selling Restrictions**

**General.** Each of the selling agents, severally and not jointly, has represented and agreed that it has not and will not offer, sell, or deliver any note, directly or indirectly, or distribute this prospectus supplement or the accompanying prospectus, or any other offering material relating to any of the notes, in any jurisdiction except under circumstances that will result in compliance with applicable laws and regulations and that will not impose any obligations on us except as set forth in the distribution agreement.

**Argentina.** We have not made, and will not make, any application to obtain an authorization from the Comisión Nacional de Valores (the "CNV") for the public offering of the notes in

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Argentina. The CNV has not approved the terms and conditions of the notes, their issuance or offering, this prospectus supplement or the accompanying prospectus, or any other document relating to the offering of the notes. The selling agents have not offered or sold, and will not offer or sell, any of the notes in Argentina, except in transactions that will not constitute a public offering of securities within the meaning of Sections 2 and 83 of the Argentine Capital Markets Law No. 26,831. Argentine insurance companies may not purchase the notes.

**Australia.** Each selling agent has represented and agreed that in connection with the distribution of the notes, it:

- (a) must not make any offer or invitation in Australia or which is received in Australia in relation to the issue, sale or purchase of any notes unless the offeree or invitee is required to pay at least A\$500,000 for the notes or its foreign currency equivalent (in either case disregarding amounts, if any, lent by us or any other person offering the notes or its associates (within the meaning of those expressions in Part 6D.2 of the Corporations Act 2001 (Cth) of Australia (the “Corporations Act”)), or it is otherwise an offer or invitation in respect of which, by virtue of section 708 of the Corporations Act, no disclosure is required to be made under Part 6D.2 of the Corporations Act and provided that in any case the offeree or invitee is not a retail client (within the meaning of section 761G or section 761GA of the Corporations Act); and
- (b) has not circulated or issued and must not circulate or issue this prospectus supplement or the accompanying prospectus or any disclosure document relating to the notes in Australia or which is received in Australia which requires lodging under Division 5 of Part 6D.2 or under Part 7 of the Corporations Act.

We are not authorized under the Banking Act 1959 of the Commonwealth of Australia (the “Australian Banking Act”) to carry on banking business and are not subject to prudential supervision by the Australian Prudential Regulation Authority. The notes are not Deposit Liabilities under the Australian Banking Act.

**Austria.** The notes may only be offered in the Republic of Austria in accordance with the Austrian Capital Market Act and any other laws and regulations applicable in the Republic of Austria governing the issue, offer and sale of securities in the Republic of Austria. The notes are not registered or otherwise authorized for public offer under the Austrian Capital Market Act or any other applicable laws and regulations in Austria. The recipients of this prospectus supplement, the accompanying prospectus and any other selling materials in respect to the notes are qualified investors within the meaning of the Austrian Capital Market Act, i.e., persons who purchase and sell securities as part of their profession or business, and are targeted exclusively on the basis of a private placement. Accordingly, the notes may not be, and are not being, issued, offered or advertised publicly or offered similarly under either the Austrian Capital Market Act or any other relevant securities legislation in Austria. We are a U.S. bank holding company and a financial holding company. We are not a bank under the Austrian Banking Act (*Bankwesengesetz*) and are not EU passported to perform banking business in Austria.

**Brazil.** The information contained in this prospectus supplement or in the accompanying prospectus does not constitute a public offering or distribution of securities in Brazil and no registration or filing with respect to any securities or financial products described in these documents has been made with the Comissão de Valores Mobiliários (the “CVM”). No public offer of securities or financial products described in this prospectus supplement or in the accompanying prospectus should be made in Brazil without the applicable registration at the CVM.

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**Canada.** Each selling agent has represented and agreed that in connection with the distribution of the notes it will sell the notes from outside Canada solely to purchasers purchasing as principal that are both “accredited investors” as defined in National Instrument 45-106 *Prospectus and Registration Exemptions* and “permitted clients” as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

**Chile.** The notes have not been registered with the Superintendency of Securities and Insurance of Chile, and the notes may not be offered or sold to persons in Chile, except in circumstances which do not result in an offer to the public in Chile, within the meaning of Chilean Law.

**The People’s Republic of China.** This prospectus supplement and the accompanying prospectus have not been filed with or approved by the People’s Republic of China (for such purposes, not including Hong Kong and Macau Special Administrative Regions or Taiwan) authorities, and is not an offer of securities (whether public offering or private placement) within the meaning of the Securities Law or other pertinent laws and regulations of the People’s Republic of China. This prospectus supplement and the accompanying prospectus shall not be delivered to any party who is not an intended recipient or offered to the general public if used within the People’s Republic of China, and the notes so offered cannot be sold to anyone that is not a qualified purchaser of the People’s Republic of China. Each selling agent has represented, warranted and agreed that the notes are not being offered or sold and may not be offered or sold, directly or indirectly, in the People’s Republic of China, except under circumstances that will result in compliance with applicable laws and regulations.

**European Economic Area.** In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a “Relevant Member State”), each selling agent has represented and agreed, and each further selling agent appointed under the program will be required to represent and agree, that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the “Relevant Implementation Date”), it has not made and will not make an offer of notes which are the subject of the offering contemplated by this prospectus supplement and the accompanying prospectus to the public in that Relevant Member State except that it may, with effect from and including the Relevant Implementation Date, make an offer of such notes to the public in that Relevant Member State:

- (a) at any time to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) at any time to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive (as defined below), 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), subject to obtaining the prior consent of each selling agent or other agent(s) nominated by us for any such offer; or
- (c) at any time in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of notes referred to in (a) to (c) above shall require us or any selling agent to publish a prospectus pursuant to Article 3 of the Prospectus Directive, or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of notes to the public,” in relation to any notes in any Relevant Member State, means the communication in any form and by any means of sufficient information on the terms of the offer and the notes to be offered so as to enable an investor to decide to purchase or subscribe for the notes, as the same may be varied in that Member



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State by any measure implementing the Prospectus Directive in that Member State, the expression “**Prospectus Directive**” means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State, and the expression “**2010 PD Amending Directive**” means Directive 2010/73/EU.

**France.** This prospectus supplement and accompanying prospectus have not been approved by the *Autorité des marchés financiers* (“AMF”). Each of the selling agents has represented and agreed that:

- (a) it has only made and will only make an offer of the notes to the public (*offre au public*) in France or an admission of the notes to trading on a regulated market in France in the period beginning (i) when a prospectus in relation to those notes has been approved by the AMF, on the date of such publication, or (ii) when a prospectus in relation to those notes has been approved by the competent authority of another Member State of the European Economic Area which has implemented the EU Prospectus Directive 2003/71/EC, on the date of notification of such approval to the AMF and, in either case, when the formalities required by French laws and regulations have been carried out, and ending at the latest on the date which is 12 months after the date of the approval of the prospectus, all in accordance with articles L.412-1 and L.621-8 to L.621-8-3 of the French *Code monétaire et financier* and the *Règlement général* of the AMF; or
- (b) it has only made and will only make an offer of the notes to the public in France or an admission of the notes to trading on a regulated market in France in circumstances which do not require the publication by the offeror of a prospectus pursuant to the French *Code monétaire et financier* and the *Règlement général* of the AMF; and
- (c) otherwise, it has not offered or sold and will not offer or sell, directly or indirectly, the notes to the public in France, and it has not distributed or caused to be distributed and will not distribute or cause to be distributed this prospectus supplement, the accompanying prospectus or any other offering material relating to the notes to the public in France, and such offers, sales and distributions have been and will be made in France only to (i) providers of the investment service of portfolio management for the account of third parties, and/or (ii) qualified investors (*investisseurs qualifiés*) other than individuals, acting for their own account, all as defined in, and in accordance with, articles L.411-2, D.411-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*. The direct or indirect resale of the notes to the public in France may be made only as provided by, and in accordance with, articles L.411-1, L.411-2, L.412-1 and L.621-8 to L.621-8-3 of the French *Code monétaire et financier*.

In addition, each of the selling agents has represented and agreed that it has not distributed or caused to be distributed and will not distribute or cause to be distributed in France, this prospectus supplement or the accompanying prospectus, or any other offering material relating to the notes other than to investors to whom offers and sales of the notes in France may be made as described above.

**Hong Kong.** Each selling agent has represented and agreed that:

- (a) it has not offered or sold and will not offer or sell in the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”), by means of any document, any notes other than (i) to “professional investors” as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong (the “SFO”) and any rules made under the SFO, or (ii) in other circumstances which do not result in the document being a “prospectus” as

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defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong (the “CO”) or which do not constitute an offer to the public within the meaning of the CO; and

- (b) it has not issued or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere, any advertisement, invitation, or document relating to the notes, which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the notes that are or are intended to be disposed of (i) only to persons outside Hong Kong or (ii) only to “professional investors” as defined in the SFO and any rules made under the SFO.

**Indonesia.** The notes offered have not been and will not be registered under the Indonesian Capital Market Law (Law No. 8/1995) and therefore are not authorized by the Capital Market and Financial Services Authority (OJK) in Indonesia as a public offering of securities. Likewise, the notes and this prospectus supplement and accompanying prospectus are not authorized by the Central Bank (Bank Indonesia) for their distribution through banking institutions in Indonesia.

Investors who intend to buy the notes should consult with their financial advisors, brokers or other financial experts before making any decision to buy the notes.

**Israel.** This prospectus supplement and the accompanying prospectus are intended solely for investors listed in the First Supplement of the Israeli Securities Law of 1968, as amended. A prospectus has not been prepared or filed, and will not be prepared or filed, in Israel relating to the notes offered hereunder. The notes cannot be resold in Israel other than to investors listed in the First Supplement of the Israeli Securities Law of 1968, as amended.

Subject to any applicable law, the notes offered hereunder may not be offered or sold to more than thirty-five offerees, in the aggregate, who are resident in the State of Israel, and are not listed in the First Supplement of the Israeli Securities Law of 1968. No action will be taken in Israel that would permit an offering of the notes or the distribution of any offering document or any other material to the public in Israel. In particular, no offering document or other material has been reviewed or approved by the Israel Securities Authority. Any material provided to an offeree in Israel may not be reproduced or used for any other purpose, nor be furnished to any other person other than those to whom copies have been provided directly by us or the selling agents.

**Italy.** The offering of the notes has not been registered with CONSOB—*Commissione Nazionale per le Società e la Borsa* (the Italian Companies and Exchange Commission) pursuant to Italian securities legislation and, accordingly, no such notes may be offered, sold or delivered, nor may copies of this prospectus supplement or the accompanying prospectus or of any other document relating to the notes be distributed in the Republic of Italy except:

- (i) to qualified investors (*investitori qualificati*), as defined in Article 34-ter, first paragraph, letter (b), of CONSOB Regulation No. 11971 of May 14, 1999, as amended (“CONSOB Regulation No. 11971”), pursuant to Article 100 of Legislative Decree No. 58 of February 24, 1998, as amended (the “Italian Financial Services Act”); or
- (ii) in other circumstances which are expressly exempted from the rules on offerings of securities to the public (*offerta al pubblico di prodotti finanziari*) pursuant to Article 100 of the Italian Financial Services Act and Article 34-ter, first paragraph, of CONSOB Regulation No. 11971.

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In addition and without prejudice to the foregoing, any offer, sale or delivery of the notes or distribution of copies of this prospectus supplement and the accompanying prospectus or any other document relating to such notes in the Republic of Italy under (a) or (b) above must be:

- (a) made by an investment firm, bank or financial intermediary authorized to conduct such activities in the Republic of Italy in accordance with the Italian Financial Services Act, Legislative Decree No. 385 of September 1, 1993, as amended (the “Consolidated Banking Act”), and Regulation No. 16190 of October 29, 2007 (as amended from time to time); and
- (b) in compliance with Article 129 of Consolidated Banking Act, as amended, and the implementing guidelines of the Bank of Italy, as amended from time to time, pursuant to which the Bank of Italy may require the issuer or any entity offering the notes to provide data and information on the issue or the offer of the notes in the Republic of Italy; and
- (c) in compliance with any other applicable laws and regulations, as well as with any regulations or requirements imposed by CONSOB, the Bank of Italy or other Italian authority.

Please note that in accordance with Article 100-bis of the Financial Services Act, concerning the circulation of financial products, where no exemption from the rules on offerings of securities to the public applies under (a) and (b) above, the subsequent distribution of the notes on the secondary market in Italy must be made in compliance with the public offer and the prospectus requirement rules provided under the Financial Services Act and CONSOB Regulation No. 11971. Furthermore, Article 100-bis of the Financial Services Act affects the transferability of the notes in the Republic of Italy to the extent that any placing of the notes is made solely with qualified investors and the notes are then systematically resold to non-qualified investors on the secondary market at any time in the 12 months following such placing. Where this occurs, if a prospectus has not been published, purchasers of the notes who are acting outside of the course of their business or profession may be entitled to declare such purchase null and void and to claim damages from any authorized intermediary at whose premises the notes were purchased, unless an exemption provided for by the Financial Services Act applies.

**Japan.** The notes have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Act No. 25 of 1948, as amended, the “FIEL”). Each selling agent has represented and agreed that it has not offered or sold and will not offer or sell any notes, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person or resident in Japan, including any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to, or for the benefit of, a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the FIEL and any other applicable laws, regulations, and ministerial guidelines of Japan.

If the offer is made by way of Qualified Institutional Investors Private Placement as set out in Article 2, Paragraph 3, Item 2(i) or Article 2, Paragraph 4, Item 2(i) of the FIEL (the “QII Private Placement”), the notes are being offered to qualified institutional investors (the “QIIs”) as defined in Article 10 of the Cabinet Office Ordinance Concerning the Definition of Terms provided in Article 2 of the FIEL and the investor of any notes is prohibited from transferring such notes in Japan to any person in any way other than to QIIs. As the offering of the notes satisfies the requirements provided in Article 2, Paragraph 3, Item 2(i) or Article 2, Paragraph 4, Item 2(i) of the FIEL, no securities registration statement has been or will get filed under Article 4, Paragraph 1 of the FIEL.

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Except in the case the offering is made by way of QII Private Placement, the notes are being offered only to a small number of potential investors (i.e., less than 50 offerees, except QIIs who are offered the notes pursuant to the QII Private Placement), and the investor of any notes (other than the above-mentioned QII investors) is prohibited from transferring such notes to another person in any way other than as a whole to one transferee. As the offering of the notes satisfies the requirements provided in Article 2, Paragraph 3, Item 2(ha) or Article 2, Paragraph 4, Item 2(ha) of the FIEL, no securities registration statement has been or will be filed under Article 4, Paragraph 1 of the FIEL.

**Mexico.** The notes have not been and will not be registered in the National Securities Registry (*Registro Nacional de Valores*). Therefore, the notes may not be offered or sold in the United Mexican States (“Mexico”) by any means except in circumstances which constitute a private offering (*oferta privada*) pursuant to Article 8 of the Securities Market Law (*Ley del Mercado de Valores*) and its regulations. All applicable provisions of the Securities Market Law must be complied with in respect to anything done in relation to the notes in, from or otherwise involving Mexico.

**Netherlands.** We do not have an authorization from the Dutch Central Bank (*De Nederlandsche Bank N.V.*) pursuant to the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) for the pursuit of the business of a credit institution in the Netherlands and therefore do not have a license pursuant to section 2.1(1), 2.12(1), 2.13(1) or 2.20(1) of the Dutch Financial Supervision Act.

Each selling agent has represented and agreed that it has not made and will not make an offer of the notes to the public in the Netherlands other than to qualified investors (*gekwalificeerde beleggers*), provided that no such offer of the notes will require us or any selling agent to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

**New Zealand.** We do not intend that notes be offered for sale or subscription to the public in New Zealand in terms of the Securities Act 1978 of New Zealand. Accordingly, no prospectus has been or will be registered, and no investment statement will be prepared, under the Securities Act 1978 of New Zealand.

The notes shall not be directly or indirectly offered for sale, sold or transferred to any member of the public in New Zealand in breach of the Securities Act 1978 or the Securities Regulations 2009 of New Zealand. In particular, but without limitation, in respect of offers of or invitations for the notes received in New Zealand, the notes may only be offered or transferred either:

- (a) to persons whose principal business is the investment of money or to persons who, in the course of and for the purposes of their business, habitually invest money within the meaning of section 3(2)(a)(ii) of the Securities Act 1978; or
- (b) to persons who are each required to pay a minimum subscription price of at least NZ\$500,000 for the notes (disregarding any amount lent by the offeror, us, or any associated person of the offeror or us) before the allotment of those notes and who have a minimum holding of the Notes of at least NZ\$500,000; or
- (c) to persons who have each paid a minimum subscription price of at least NZ\$500,000 for notes previously issued by us (“Initial Securities”) (in a single transaction before allotment of Initial Securities and disregarding any amount lent by the offeror, us or any associated person of the offeror or us), provided the date of first allotment of Initial Securities occurred not more than 18 months before the date of offer of the relevant notes; or

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- (d) to any other persons in circumstances where there is no contravention of the Securities Act 1978, provided that notes shall not be offered or sold to any “eligible person” (as defined in section 5(2CC) of the Securities Act 1978) unless that person also satisfies the criteria in paragraphs (a), (b) or (c) above.

In addition, each holder of the notes is deemed to represent and agree that it will not distribute, publish, deliver or disseminate this prospectus supplement and the accompanying prospectus or any other advertisement (as defined in the Securities Act 1978) in relation to any offer of the notes in New Zealand other than to any such persons as referred to in paragraphs (a) to (d) above.

***Philippines.* THE NOTES BEING OFFERED OR SOLD HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES REGULATION CODE. ANY FUTURE OFFER OR SALE THEREOF IS SUBJECT TO REGISTRATION REQUIREMENTS UNDER THE SECURITIES REGULATION CODE UNLESS SUCH OFFER OR SALE QUALIFIES AS AN EXEMPT TRANSACTION.**

***Singapore.*** This prospectus supplement and the accompanying prospectus have not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus supplement and the accompanying prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the notes may not be circulated or distributed, nor may the notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the notes are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- (a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries’ rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the notes pursuant to an offer made under Section 275 of the SFA except:

- (1) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;
- (2) where no consideration is or will be given for the transfer;
- (3) where the transfer is by operation of law;

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- (4) as specified in Section 276(7) of the SFA; or
- (5) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

**South Korea.** The notes have not been and will not be registered under the Financial Investments Services and Capital Markets Act of Korea and the decrees and regulations thereunder (the “FSCMA”) and the notes have been and will be offered in Korea as a private placement under the FSCMA. None of the notes may be offered, sold and delivered directly or indirectly, or offered or sold to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea except pursuant to the applicable laws and regulations of Korea, including the FSCMA and the Foreign Exchange Transaction Law of Korea and the decrees and regulations thereunder (the “FETL”). For a period of one year from the issue date of the notes, any acquirer of the notes who was solicited to buy the notes in Korea is prohibited from transferring any of the notes to another person in any way other than as a whole to one transferee. Furthermore, the purchaser of the notes shall comply with all applicable regulatory requirements (including but not limited to requirements under the FETL) in connection with the purchase of the notes.

Each selling agent has represented and agreed that it has not offered, sold or delivered the notes directly or indirectly, or offered or sold the notes to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea and will not offer, sell or deliver the notes directly or indirectly, or offer or sell the notes to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the FSCMA, the FETL and other relevant laws and regulations of Korea.

**Switzerland.** The notes may not be offered, sold or advertised directly or indirectly into or in Switzerland except in a manner which will not result in a public offering within the meaning of article 652a or 1156 of the Swiss Federal Code of Obligations (“CO”). Neither this prospectus supplement and the accompanying prospectus nor any other offering or marketing materials relating to the notes have been prepared with regard to the disclosure standards for prospectuses under article 652a or 1156 CO, and therefore do not constitute a prospectus within the meaning of article 652a or 1156 CO. Neither this prospectus supplement and the accompanying prospectus nor any other offering or marketing materials relating to the notes may be distributed, published or otherwise made available in Switzerland except in a manner which will not constitute a public offering of the notes into or in Switzerland.

**Taiwan.** The notes may be made available for purchase outside Taiwan by investors residing in Taiwan (either directly or through properly licensed Taiwan intermediaries acting on behalf of such investors) but may not be offered or sold in Taiwan.

**United Arab Emirates.** This prospectus supplement and the accompanying prospectus have not been approved or licensed by the Central Bank of the United Arab Emirates (the “UAE”), Securities and Commodities Authority of the UAE (the “SCA”), the Dubai Financial Services Authority (the “DFSA”) or any other relevant licensing authority in the UAE. The offer of the notes does not constitute a public offer of securities in the UAE in accordance with relevant laws of the UAE, in particular, the Commercial Companies Law, Federal law No. 8 of 1984 (as amended), SCA Resolution No.(37) of 2012 or otherwise. Accordingly, the notes may not be offered to the public in the UAE (including the Dubai International Financial Centre).

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This prospectus supplement and the attached prospectus are strictly private and confidential and are being issued to a limited number of institutional and individual investors:

- (a) who qualify as sophisticated investors;
- (b) upon their request and confirmation that they understand that the notes have not been approved or licensed by or registered with the UAE Central Bank, the SCA, DFSA or any other relevant licensing authorities or governmental agencies in the UAE; and
- (c) must not be provided to any person other than the original recipient, and may not be reproduced or used for any other purpose.

Each selling agent represents and warrants that it has not and will not offer, sell, transfer or deliver the notes to the public in the UAE (including the Dubai International Financial Centre).

**United Kingdom.** Each selling agent has represented and agreed, and each further selling agent appointed in connection with the notes will be required to represent and agree, that:

- (a) in relation to any notes which have a maturity of less than one year (i) it is a person whose ordinary activities involve it in acquiring, holding, managing, or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any notes other than to persons whose ordinary activities involve them in acquiring, holding, managing, or disposing of investments (as principal or agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage, or dispose of investments (as principal or agent) for the purposes of their businesses, where the issue of the notes would otherwise constitute a contravention of section 19 of the Financial Services and Markets Act of 2000 (the “FSMA”) by us;
- (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any notes in circumstances in which section 21(1) of the FSMA does not apply to us; and
- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any notes in, from, or otherwise involving the United Kingdom.

**Uruguay.** The notes have not been registered under Law No. 18.627 of December 2, 2009 with the Central Bank of Uruguay. The notes are not available publicly in Uruguay and are offered only on a private basis. No action may be taken in Uruguay that would render any offering of the notes a public offering in Uruguay. No Uruguayan regulatory authority has approved the notes or passed on our solvency. In addition, any resale of the notes must be made in a manner that will not constitute a public offering in Uruguay.

*Los valores no han sido registrados bajo la Ley de Mercado de Valores de la República Oriental del Uruguay o registrados ante el Banco Central del Uruguay. Los valores no son ofrecidos en forma pública en Uruguay y lo son únicamente en forma privada. Ninguna acción puede ser adoptada en Uruguay en relación a estos valores que resulte en que esta oferta de valores sea una oferta pública de valores en Uruguay. Ninguna autoridad regulatoria del Uruguay ha aprobado estos valores o se ha manifestado sobre nuestra solvencia. Adicionalmente, cualquier reventa de estos valores debe ser realizada en forma tal que no constituya oferta pública de valores en el Uruguay.*

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**Venezuela.** The notes have not been registered with the Comision Nacional de Valores de Venezuela and are not being publicly offered in Venezuela. No document related to the offering of the notes, including this prospectus supplement and the accompanying prospectus, shall be interpreted to constitute an offer of securities or an offer or the rendering of any investment advice, securities brokerage, and/or banking services in Venezuela. Investors wishing to acquire the notes may use only funds located outside of Venezuela.

**LEGAL MATTERS**

The legality of the notes will be passed upon for us by McGuireWoods LLP, Charlotte, North Carolina, and for the selling agents by Morrison & Foerster LLP, New York, New York. McGuireWoods LLP regularly performs legal services for us. Some members of McGuireWoods LLP performing those legal services own shares of our common stock.



You should rely only on the information incorporated by reference or provided in this prospectus supplement, the accompanying prospectus, any related product supplement, index supplement, and/or pricing supplement. We have not authorized anyone to provide you with different information. We are not offering the securities in any jurisdiction where the offer is not permitted. You should not assume that the information in this prospectus supplement and the accompanying prospectus is accurate as of any date other than the date on the front of this document.

Our affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, will deliver this prospectus supplement, the accompanying prospectus, and any related product supplement, index supplement, and/or pricing supplement for offers and sales in the secondary market.



**Medium-Term Notes,  
Series L**

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**PROSPECTUS SUPPLEMENT**

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**BofA Merrill Lynch**

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PROSPECTUS



\$7,000,000,000

**Bank of America Corporation InterNotes®**

We may offer to sell up to \$7,000,000,000 of our Bank of America Corporation InterNotes®, or the notes, from time to time. The specific terms of our InterNotes® will be determined prior to the time of sale and will be described in a separate supplement. You should read this prospectus and the applicable supplement carefully before you invest.

We may offer the notes to or through agents for resale. The applicable supplement will specify the purchase price, agent discounts and net proceeds for any particular offering of notes. The agents are not required to sell any specific amount of notes but will use their best efforts to sell the notes. We also may offer the notes directly. We have not set a date for termination of our offering of the notes.

The agents have advised us that from time to time they may purchase and sell notes in the secondary market, but they are not obligated to make a market in the notes and may suspend or completely stop that activity at any time. Unless otherwise indicated in the applicable supplement, the notes will not be listed on any stock exchange.

**Investing in the notes involves risks, including those described in the ["Risk Factors"](#) section beginning on page 7 of this prospectus.**

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*Our notes are unsecured and are not savings accounts, deposits or other obligations of a bank. Our notes are not guaranteed by Bank of America, N.A. or any other bank and are not insured by the Federal Deposit Insurance Corporation or any other governmental agency.*

*Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these notes or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.*

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*Joint Lead Managers and Lead Agents*

**BofA Merrill Lynch**

**Incapital LLC**

*Agents*

**Citigroup**

**Morgan Stanley**

**Wells Fargo Advisors, LLC**

Prospectus dated February 24, 2015

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### **ABOUT THIS PROSPECTUS**

This document is a prospectus and is part of a registration statement that we filed with the Securities and Exchange Commission, or the “SEC.”

This prospectus describes all material terms of the notes we may offer in connection with the Bank of America Corporation InterNotes® program that are known as of the date of this prospectus. We may offer to sell up to \$7,000,000,000 of these InterNotes® from time to time in various offerings. While we have various notes and other evidence of indebtedness outstanding, references in this prospectus to “notes” are to the Bank of America Corporation InterNotes® only.

The specific terms and conditions of the notes being offered will be described in a pricing supplement or a prospectus supplement, each of which we refer to in this prospectus as a “supplement.” A copy of that supplement will be provided to you along with a copy of this prospectus. That supplement may add to, update or change information in this prospectus. If there is any inconsistency between the information in this prospectus and the applicable supplement, you should rely on the information in the applicable supplement. You should read both this prospectus and the applicable supplement together with the additional information that is incorporated by reference in this prospectus. That additional information is described under the heading “Where You Can Find More Information” beginning on page 43 of this prospectus.

You should rely only on the information provided in this prospectus and the applicable supplement, including the information incorporated by reference. Neither we,

nor any agents or dealers, have authorized anyone to provide you with different information. We are not offering the notes in any jurisdiction where the offer or sale is not permitted. You should not assume that the information in this prospectus or any supplement is accurate as of any date other than the date indicated on the cover page of that document.

The agents will receive a gross selling concession in the form of a discount based on the non-discounted price for each note sold. In this capacity, none of the agents is your fiduciary or advisor, and you should not rely upon any communication from any of the agents in connection with the notes as investment advice or as a recommendation to purchase the notes. You should make your own investment decision regarding the notes after consulting with your legal, tax and other advisors.

Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to “we,” “us,” “our” or similar references are to Bank of America Corporation excluding its consolidated subsidiaries. References in this prospectus to “U.S. dollars,” “U.S.\$” or “\$” are to the currency of the United States of America.

Affiliates of Bank of America Corporation, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, may use this prospectus in connection with offers and sales in the secondary market of Bank of America Corporation InterNotes®. These affiliates may act as principal or agent in those transactions. Secondary market sales made by them will be made at prices related to market prices at the time of sale.

**SUMMARY**

*This section highlights some of the legal and financial terms of the notes that are described in more detail in the section entitled “Description of Notes” beginning on page 11 and elsewhere in this prospectus. Final terms of any particular notes will be determined at the time of sale and will be contained in the supplement relating to those notes. The terms in that supplement may vary from and supersede the terms contained in this prospectus. Before you decide to purchase any notes, you should read the more detailed information appearing elsewhere in this prospectus and in the applicable supplement.*

|                                      |  |
|--------------------------------------|--|
| Issuer                               | Bank of America Corporation<br>Bank of America Corporate Center, 100 North Tryon Street, Charlotte,<br>North Carolina 28255; telephone: (704) 386-5681   |
| Purchasing Agent                     | Incapital LLC  |
| Joint Lead Managers and Lead Agents  | Merrill Lynch, Pierce, Fenner & Smith Incorporated and Incapital LLC   |
| Agents                               | Citigroup Global Markets Inc.<br>Morgan Stanley & Co. LLC<br>Wells Fargo Advisors, LLC   |
| Title of Notes                       | Bank of America Corporation InterNotes®  |
| Affiliates and Conflicts of Interest | Bank of America Corporation is the indirect parent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, one of two Joint Lead Managers and a Lead Agent. Additional details of this relationship are disclosed in the section entitled “Plan of Distribution and Conflicts of Interest” beginning on page 41.  |
| Amount                               | We may offer to sell from time to time in various offerings up to \$7,000,000,000 of notes.  |
| Denominations                        | The notes will be issued and sold in denominations of \$1,000 and multiples of \$1,000 or in any other denomination provided in the applicable supplement.   |
| Status                               | The notes will be our direct unsecured obligations. Each supplement will state whether the notes will be senior or subordinated debt. Senior notes will rank equally with our other unsecured and unsubordinated debt, other than unsecured and unsubordinated debt subject to priorities or preferences by law, and subordinated notes will rank equally with our other unsecured and subordinated debt, other than unsecured and subordinated debt that by its terms is subordinated to the subordinated notes. Subordinated notes will be subordinate and junior in right of payment to our existing and future senior debt to the extent and in the manner provided in the Subordinated Indenture (as defined below). See “Description of Notes — Subordination” beginning on page 24. As of September 30, 2014, on a non-consolidated basis we had approximately \$154 billion of senior long-term debt and certain short-term borrowings. “Senior indebtedness” also includes our obligations under letters of credit, guarantees, foreign exchange contracts and interest rate swap contracts, none of which are included in such amount. In addition, holders of subordinated notes may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding. Although we are a bank holding company, the notes are not savings accounts or deposits in our sub- |

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|  | <p>sidiary, Bank of America, N.A., are not guaranteed by Bank of America, N.A. or any other bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.</p>   |
| Holders of Subordinated Notes Have Limited Acceleration Rights | <p>Payment of principal of our subordinated notes may not be accelerated if there is a default in the payment of principal, any premium, interest or other amounts or in the performance of any of our other indenture covenants.</p>   |
| Maturities   | <p>Each note will mature nine months or more from its issue date.</p>   |
| Interest   | <p>Each interest-bearing note will accrue interest from its issue date at a fixed rate or a floating rate. We also may issue notes with a rate of return, including principal, premium, if any, interest or other amounts payable, if any, that is determined by reference, either directly or indirectly, to the price, performance or levels of one or more securities, currencies or composite currencies, commodities, interest rates, inflation rates, stock or other indices, or other financial or market measures, formulae or reference assets, or any combination of the above, as specified in the applicable supplement.</p> <p>Interest on each interest-bearing note will be payable either monthly, quarterly, semi-annually or annually on each interest payment date and on the maturity date, as specified in the applicable supplement. If a note is redeemed or repurchased prior to maturity, interest also will be paid on the date of redemption or repayment.</p>     |
| Principal  | <p>The principal amount of each note will be payable on its maturity date at the corporate trust office of the paying agent or at any other place we may designate. If, however, a note is redeemed or repurchased prior to maturity, the principal amount of the note will be paid on the date of redemption or repayment.</p>   |
| Redemption and Repayment                                       | <p>Unless we provide otherwise in the applicable supplement, the notes will not be redeemable at our option or repayable at the option of the holder prior to the maturity date. The notes will be unsecured and will not be subject to any sinking fund.</p>   |
| Survivor's Option  | <p>Specific notes may contain a provision that requires us, upon request by the authorized representative of the beneficial owner of the notes, to repay those notes prior to maturity following the death of the beneficial owner of the notes, so long as the notes were acquired by the deceased beneficial owner at least six months prior to the request. This feature is referred to as the Survivor's Option. Your notes may not be repaid in this manner unless the supplement for your notes provides for the Survivor's Option. The right to exercise the Survivor's Option will be subject to limits set by us on (1) the permitted dollar amount of total exercises by all holders of all notes in any calendar year and (2) the permitted dollar amount of an individual exercise by a holder of a note in any calendar year. Additional details relating to this right are described in the section entitled "Description of Notes—Survivor's Option" beginning on page 22.</p> |
| Sale and Clearance   | <p>We will sell notes in the United States only. Notes will be issued in book-entry only form and clear through the facilities of The Depository Trust Company. We do not intend to issue notes in certificated or definitive form.</p>   |
| Trustee  | <p>The trustee for the notes is The Bank of New York Mellon Trust Company, N.A., 10161 Centurion Parkway, Jacksonville, Florida 32256, under separate amended and restated indentures, each dated as of July 1, 2001, as amended or supplemented from time to time. The trustee also is the initial paying agent and calculation agent for the notes.</p>   |

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**Selling Group** The agents and dealers comprising the selling group are broker-dealers and securities firms. The agents, including the Purchasing Agent, have entered into an Amended and Restated Selling Agent Agreement with us dated as of July 16, 2014. Dealers who are members of the selling group have executed a Master Selected Dealer Agreement with the Purchasing Agent. You may contact the Purchasing Agent by telephone at 1-800-289-6689 or by email at [info@incapital.com](mailto:info@incapital.com) for a list of selling group members.

**Ratio of Earnings to Fixed Charges** The following table sets forth our consolidated ratios of earnings to fixed charges for the periods indicated.

|   | <b>Nine Months<br/>Ended<br/>September 30</b> |             | <b>Year Ended December 31</b> |             |             |             |
|---|---|-------------|-------------------------------|-------------|-------------|-------------|
|   | <b>2014</b>                                   | <b>2013</b> | <b>2012</b>                   | <b>2011</b> | <b>2010</b> | <b>2009</b> |
| Ratio of earnings to fixed charges (excluding interest on deposits) | 1.27  | 2.29        | 1.21                          | 1.02        | 0.99        | 1.10        |
| Ratio of earnings to fixed charges (including interest on deposits) | 1.25  | 2.16        | 1.18                          | 1.02        | 1.00        | 1.08        |

<sup>1</sup> The earnings for 2010 were inadequate to cover fixed charges. The earnings deficiency is a result of \$12.4 billion of goodwill impairment charges during 2010. The coverage deficiency for fixed charges was \$113 million.

## RISK FACTORS

Your investment in the notes will involve risks. This section summarizes some specific risks and investment considerations with respect to an investment in the notes. This prospectus does not describe all of those risks and investment considerations, including risks and considerations relating to your particular circumstances. Neither we nor the agents are responsible for advising you of these risks now or as they may change in the future.

In consultation with your own financial, tax and legal advisors, you should consider carefully the following discussion of risks, among other matters, before deciding whether an investment in the notes is suitable for you. The notes are not an appropriate investment for you if you are not knowledgeable about significant features of the notes or financial matters in general. You should not purchase notes unless you understand and know you can bear these investment risks.

For information about risks and uncertainties that may materially affect our business and results, please refer to the information under the captions “Item 1A. Risk Factors” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our annual report on Form 10-K for the year ended December 31, 2013, which is incorporated by reference in this prospectus, as well as those risks and uncertainties discussed in our subsequent filings with the SEC that are incorporated by reference in this prospectus.

*We may choose to redeem notes when prevailing interest rates are relatively low.*

If your notes are redeemable at our option, we may choose to redeem your notes from time to time. Prevailing interest rates at the time we redeem your notes likely would be lower than the interest rate borne by your notes. If prevailing interest rates are lower when we elect to redeem your notes, you may not be able to

reinvest the redemption proceeds in a comparable security at an effective interest rate as high as the interest rate on the notes being redeemed. Our redemption right also may adversely impact your ability to sell your notes as our redemption date approaches.

*We cannot assure you that a trading market for your notes will ever develop or be maintained.*

Unless otherwise specified in the applicable supplement, the notes will not be listed on any securities exchange. We cannot predict how the notes will trade in the secondary market or whether that market will be liquid or illiquid. We cannot assure you that a trading market for your notes will ever develop or be maintained, which may limit your ability to sell your notes prior to maturity.

To the extent that the agents engage in any market-making activities, they may bid for or offer notes. Any price at which the agents may bid for, offer, purchase or sell any notes may differ from the values determined by pricing models that may be used by any agent, whether as a result of dealer discounts, mark-ups or other transaction costs. These bids, offers or completed transactions may affect the prices, if any, at which the notes might otherwise trade in the market.

In addition, if at any time the agents were to cease acting as a market maker, it is likely that there would be significantly less liquidity in the secondary market, in which case the price at which the notes could be sold likely would be lower than if an active market existed.

*If you attempt to sell your notes prior to maturity, the market value of the notes, if any, may be less than the principal amount of the notes.*

Unlike savings accounts, certificates of deposit and other similar investment products, your right to redeem the notes prior to maturity may be limited to a valid exercise of the Survivor’s Option. If you wish to liquidate your investment in the notes prior to maturity, selling your notes may be your only option. At that time, there may be a very illiquid market for the notes or no market at all. Even if you were able to sell your notes,



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there are many factors outside of our control that may affect the market value of the notes, some of these factors, but not all, are stated below. Some of these factors are interrelated in complex ways and, as a result, the effect of any one factor may be offset or magnified by the effect of another factor. Those factors include, without limitation:

- the method of calculating the principal, premium, if any, interest or other amounts payable, if any, on the notes;
- the time remaining to the maturity of the notes;
- the aggregate outstanding amount of the notes;
- the redemption or repayment features of the notes;
- the level, direction and volatility of interest rates generally;
- general economic conditions of the capital markets in the United States;
- geopolitical conditions and other financial, political, regulatory and judicial events that affect the stock markets generally; and
- any market-making activities with respect to the notes.

There may be a limited number of buyers when you decide to sell your notes. This may affect the price you receive for your notes or your ability to sell your notes at all.

For indexed notes that have very specific investment objectives or strategies, the applicable trading market may be more limited, and the price may be more volatile, than for other notes. The market value of indexed notes may be adversely affected by the complexity of the payout formula and volatility of the applicable reference asset or market measure, including any dividend rates or yields of other securities, financial instruments or indices that relate to the indexed notes. Moreover, the market value of indexed notes could be adversely affected by changes in the amount of outstanding debt, equity or other securities linked to the underlying reference asset, market measure or formula applicable to the indexed notes.

### *Floating-rate notes bear additional risks.*

If your notes bear interest at a floating rate, there will be additional significant risks not associated with a conventional fixed-rate debt security. These risks include fluctuation of the interest rates and the possibility that you will receive an amount of interest that is lower than expected. We have no control over a number of matters, including economic, financial and political events, that are important in determining the existence, magnitude and longevity of market volatility and other risks and their impact on the value of, or payments made on, your floating-rate notes. In recent years, interest rates have been volatile, and that volatility may be expected in the future.

### *Any Survivor's Option may be limited in amount.*

We will have the discretionary right to limit the aggregate principal amount of notes subject to any Survivor's Option that may be exercised in any calendar year to an amount equal to the greater of \$2,000,000 or 2% of the principal amount of all notes outstanding as of the end of the most recent calendar year. We also have the discretionary right to limit to \$250,000 in any calendar year the aggregate principal amount of notes subject to the Survivor's Option that may be exercised in such calendar year on behalf of any individual deceased beneficial owner of the notes. Accordingly, no assurance can be given that the Survivor's Option for a desired amount will be permitted in any single calendar year.

### *Our obligations under subordinated notes will be subordinated.*

Holders of subordinated notes should recognize that contractual provisions in the Subordinated Indenture may prohibit us from making payments on the subordinated notes. The subordinated notes are unsecured and subordinate and junior in right of payment to all of our senior indebtedness (as defined in the Subordinated Indenture), to the extent and in the manner provided in the Subordinated Indenture. In addition, the subordinated notes may be fully subordinated to interests held by the U.S. government in the event we enter into a

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receivership, insolvency, liquidation or similar proceedings. For additional information regarding the subordination provisions applicable to the subordinated notes, see “Description of Debt Securities — Subordination” on page 24.

*Subordinated notes have limited acceleration rights.*

Holders of subordinated notes may accelerate payment of their notes only upon our voluntary or involuntary bankruptcy. If you purchase the subordinated notes, you will have no right to accelerate the payment of the notes if we fail to pay interest on the notes or if we fail in the performance of any of our other obligations under the subordinated notes.

*Our hedging activities may affect your return at maturity and the market value of the notes.*

At any time, we or our affiliates may engage in hedging activities relating to the notes. This hedging activity, in turn, may increase or decrease the market value of the notes. In addition, we or our affiliates may acquire a long or short position in the notes from time to time. All or a portion of these positions may be liquidated at or about the time of maturity of the notes. The aggregate amount and the composition of these positions are likely to vary over time. We have no reason to believe that any of our hedging activities will have a material effect on the notes, either directly or indirectly, by impacting the value of the notes. However, we cannot assure you that our activities or affiliates’ activities will not affect these values.

*Our hedging and trading activities may create conflicts of interest with you.*

From time to time during the term of each series of notes and in connection with the determination of the yield on the notes, we or our affiliates may enter into additional hedging transactions or adjust or close out existing hedging transactions. We or our affiliates also may enter into hedging transactions relating to other notes or instruments that we issue, some of which may have returns calculated in a manner related to that of a particular series of notes. We or our affiliates will price

these hedging transactions with the intent to realize a profit, considering the risks inherent in these hedging activities, whether the value of the notes increases or decreases. However, these hedging activities may result in a profit that is more or less than initially expected, or could result in a loss.

We or one or more of our affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, may engage in trading activities that are not for your account or on your behalf. These trading activities may present a conflict of interest between your interest in the notes and the interests we and our affiliates may have in our proprietary accounts, in facilitating transactions, including block trades, for our other customers, and in accounts under our management. These trading activities, if they influence the market measure or other reference asset (if any) for the notes or secondary trading (if any) in the notes, could be adverse to your interests as a beneficial owner of the notes.

*Changes in our credit ratings may affect the market value of the notes.*

Our credit ratings are an assessment of our ability to pay our obligations. Consequently, our perceived creditworthiness and actual or anticipated changes in our credit ratings may affect the market value of the notes. However, because your return on the notes depends upon factors in addition to our ability to pay our obligations, an improvement in our credit ratings will not reduce the other investment risks, if any, related to the notes.

*The market value of the notes may be affected by factors in addition to credit ratings.*

The notes could trade at prices that may be lower than their initial offering price. In addition to credit ratings that are assigned to the notes, whether or not the notes will trade at lower prices depends on various factors, including prevailing interest rates and markets for similar securities, our financial condition and future prospects and general economic conditions. Further, any credit ratings that are assigned to the notes may not

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reflect the potential impact of all risks on their market value.

*Holders of indexed notes are subject to important risks that are not associated with more conventional debt securities.*

If you invest in indexed notes, you will be subject to significant additional risks not associated with conventional fixed-rate or floating-rate debt securities. These risks include the possibility that the applicable reference asset or market measure may be subject to fluctuations, and the possibility that you will receive a lower, or no, amount of principal, premium or interest, and at different times, than expected. In recent years, many securities, currencies, commodities, interest rates, inflation rates, indices and other market measures have experienced volatility, and this volatility may be expected in the future. However, past experience is not necessarily indicative of what may occur in the future. We have no control over a number of matters, including economic, financial and political events, that are important in determining the existence, magnitude and longevity of market volatility and other risks and their impact on the value of, or payments made on, your indexed notes. Further, you should assume that there is no statutory, judicial, or administrative authority that addresses the characterization of some types of indexed notes for U.S. federal or other income tax purposes. As a result, the income tax consequences of an investment in indexed notes are not certain.

In considering whether to purchase indexed notes, you should be aware that the calculation of amounts payable on indexed notes may involve reference to a market measure determined by one or our affiliates or prices or values that are published solely by third parties or entities which are not regulated by the laws of the United States. Additional risks that you should consider in connection with an investment in indexed notes will be set forth in the applicable supplement for those indexed notes.

*Our ability to make payments on the notes depends upon the results of operations of our subsidiaries.*

As a holding company, we conduct substantially all of our operations through our subsidiaries and depend on dividends, distributions and other payments from our banking and nonbank subsidiaries to fund payments on our obligations, including the notes. Many of our subsidiaries, including our bank and broker-dealer subsidiaries, are subject to laws that restrict dividend payments or authorize regulatory bodies to block or reduce the flow of funds from those subsidiaries to us or to our other subsidiaries. In addition, our bank and broker-dealer subsidiaries are subject to restrictions on their ability to lend or transact with affiliates and to minimum regulatory capital and liquidity requirements. These restrictions could prevent those subsidiaries from making distributions to us or otherwise providing cash to us that we need in order to make payments on the notes.

*The notes will be structurally subordinated to liabilities of our subsidiaries.*

Because we are a holding company, our right to participate in any distribution of assets of any subsidiary upon such subsidiary's liquidation or reorganization or otherwise is subject to the prior claims of creditors of that subsidiary, except to the extent we may ourselves be recognized as a creditor of that subsidiary. As a result, our obligations under the notes will be structurally subordinated to all existing and future liabilities of our subsidiaries, and claimants should look only to our assets for payments.

### **BANK OF AMERICA CORPORATION**

Bank of America 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, 100 North Tryon Street, Charlotte, North Carolina 28255, and our telephone number is (704) 386-5681. Through our banking and various nonbank subsidiaries throughout the United States and in certain international markets, we provide a diversified range of banking and nonbank financial services and products.

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### **USE OF PROCEEDS**

Unless we describe a different use in the applicable supplement, we will use the net proceeds from the sale of the notes for general corporate purposes. General corporate purposes include, but are not limited to, the following:

- our working capital needs;
- the funding of investments in, or extensions of credit to, our subsidiaries;
- possible investments in, or acquisitions of assets and liabilities of, other financial institutions or other businesses;
- possible reduction, redemptions, or repurchases of outstanding indebtedness;
- possible repayments on outstanding indebtedness; and
- other uses in the ordinary course of conducting our business.

Until we designate the use of these net proceeds, we will invest them temporarily. From time to time, we may engage in additional financings as we determine appropriate based on our needs and prevailing market conditions. These additional financings may include the sale of other notes and securities.

### **DESCRIPTION OF NOTES**

Our senior notes will be issued under an amended and restated indenture dated as of July 1, 2001, as amended or supplemented from time to time (the "Senior Indenture"), between us and The Bank of New York Mellon Trust Company, N.A. (formerly The Bank of New York Trust Company, N.A.), as successor trustee to The Bank of New York. Our subordinated notes will be issued under an amended and restated indenture dated as of July 1, 2001, as amended or supplemented from time to time (the "Subordinated Indenture," and together with the Senior Indenture, the "Indentures"),

between us and The Bank of New York Mellon Trust Company, N.A. (formerly The Bank of New York Trust Company, N.A.), as successor trustee to The Bank of New York. The Indentures are subject to, and governed by, the Trust Indenture Act of 1939. The statements in this prospectus and any applicable supplement about the notes and the Indentures are not complete and are subject to, and qualified in their entirety by, all of the provisions of the Indentures. If you would like more information concerning these provisions, you should review the Indentures, which are on file with the SEC. You also may review the Indentures at the offices of The Bank of New York Mellon Trust Company, N.A. at the address indicated in the section entitled "Summary" beginning on page 4. Whenever we refer to particular provisions of the Indentures or the defined terms contained in the Indentures, those provisions and defined terms are incorporated by reference in this prospectus and any applicable supplement.

The Indentures do not limit the amount of additional indebtedness that we may incur. Accordingly, without the consent of the holders of the notes, we may issue indebtedness under the Indentures in addition to the notes offered by this prospectus.

We may issue notes that bear interest at a fixed rate described in the applicable supplement. We refer to these notes as "fixed-rate notes." We may issue notes that bear interest at a floating rate of interest determined by reference to one or more interest rate bases, or by reference to one or more interest rate formulae, described in the applicable supplement. We refer to these notes as "floating-rate notes." In some cases, the interest rate of a floating-rate note also may be adjusted by adding or subtracting a spread or by multiplying the interest rate by a spread multiplier. A floating-rate note also may be subject to a maximum interest rate limit, or ceiling, and/or a minimum interest rate limit, or floor, on the rate of interest and/or the interest that may accrue during any interest period.

We also may issue notes that provide that the rate of return, including the principal, premium, if any, interest or other amounts payable, if any, is determined by reference, either directly or indirectly, to the price, per-

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formance or levels of one or more securities, currencies or composite currencies, commodities, interest rates, inflation rates, stock or other indices, or other financial or market measures, formulae or reference assets, or any combination of the above, in each case as specified in the applicable supplement. We refer to these notes as “indexed notes.”

We will identify the calculation agent for any floating-rate notes or indexed notes in the applicable supplement. The calculation agent will be responsible for calculating the interest rate, reference rates, principal, premium, if any, interest or other amounts payable, if any, applicable to the floating-rate notes or indexed notes, as the case may be, and for certain other related matters. The calculation agent, at the request of the holder of any floating-rate note, will provide the interest rate then in effect and, if already determined, the interest rate that is to take effect on the next interest reset date, as described below, for the floating-rate note. We may replace any calculation agent or elect to act as the calculation agent for some or all of the notes, and the calculation agent also may resign.

Notes issued in accordance with this prospectus supplement and the applicable supplement will have the following general characteristics:

- The notes will be our direct unsecured obligations. Each supplement will state whether the notes are senior or subordinated debt. Senior notes will rank equally with all of our other unsecured and unsubordinated debt, other than unsecured and unsubordinated debt subject to priorities or preferences by law, and subordinated notes will rank equally with all of our other unsecured and subordinated debt, other than unsecured and subordinated debt that by its terms is subordinated to the subordinated notes. Subordinated notes will be subordinate and junior in right of payment to our existing and future senior debt to the extent and in the manner provided in the Subordinated Indenture.
- The notes may be offered from time to time by us through the Purchasing Agent and each note will mature on a day that is nine months or more from its issue date. We also may offer the notes directly.

- The notes will bear interest from their respective issue dates at a fixed or a floating rate, or the notes will have a rate of return, including principal, premium, if any, interest or other amounts payable, if any, that is determined by reference, either directly or indirectly, to the price, performance or levels of one or more securities, currencies or composite currencies, commodities, interest rates, inflation rates, stock or other indices, or other formulae, financial or market measures or reference assets, or any combination of the above, as specified in the applicable supplement.
- The notes will not be subject to any sinking fund.
- The notes will be issued in minimum denominations of \$1,000, and in multiples of \$1,000, unless another denomination is stated in the applicable supplement.

In addition, the supplement relating to each offering of notes will describe specific terms of the notes, including:

- the principal amount of the notes offered;
- the price, which may be expressed as a percentage of the aggregate initial public offering price of the notes, at which the notes will be issued to the public;
- the Purchasing Agent’s concession;
- the net proceeds to us;
- the date on which the notes will be issued to the public;
- the stated maturity date of the notes;
- whether the notes are fixed-rate notes, floating-rate notes or indexed notes;
- whether the notes are senior or subordinated;
- the method of determining and paying interest, including any interest rate basis or bases, any initial interest rate or method for determining any initial interest rate, any interest reset dates, any interest payment dates, any index maturity, and any maximum or minimum interest rate, as applicable;
- any spread or spread multiplier applicable to floating-rate notes or indexed notes;
- the method for the calculation and payment of principal, premium, if any, interest or other amounts payable, if any;

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- the interest payment frequency;
- whether the “Survivor’s Option” described on page 22 will be applicable;
- if we decide to list any notes on a stock exchange, we will specify the exchange;
- if the notes may be redeemed at our option or repaid at the option of the holder prior to their maturity date and the provisions relating to such redemption or repayment;
- any special U.S. federal income tax consequences of the purchase, ownership and disposition of the notes; and
- any other material terms of the notes that are different from those described in this prospectus and that are not inconsistent with the provisions of the applicable Indenture.

Because we are a holding company, our right to participate in any distribution of assets of any subsidiary upon such subsidiary’s liquidation or reorganization or otherwise is subject to the prior claims of creditors of that subsidiary, except to the extent we may ourselves be recognized as a creditor of that subsidiary. As a result, our obligations under the notes will be structurally subordinated to all existing and future liabilities of our subsidiaries, and claimants should look only to our assets for payments.

### **Payment of Principal and Interest**

Principal, premium, if any, interest or other amounts payable, if any, on the notes will be paid to owners of a beneficial interest in the notes in accordance with the arrangements then in place between the paying agent and The Depository Trust Company (referred to as “DTC”), as the depository, and its participants as described under the section entitled “Registration and Settlement” beginning on page 27. Interest on each note will be payable either monthly, quarterly, semi-annually or annually on each interest payment date and at maturity, or on the date of redemption or repayment if a note is redeemed or repaid prior to maturity. Unless otherwise specified in the applicable supplement, if the interest payment date or maturity date for a fixed-rate

note falls on a day that is not a Business Day (as defined below), the payment will be made on the next succeeding Business Day, and no additional interest will accrue in respect of the amount payable on that next Business Day for the period from and after the interest payment date or the maturity date, as the case may be. Unless otherwise specified in the applicable supplement, if the interest payment date for a floating-rate note falls on a day that is not a Business Day, the payment will be made on the next succeeding Business Day. However, unless otherwise specified in the applicable supplement, if an interest payment date for a LIBOR note (as described below) falls on a day that is not a Business Day, and the next Business Day is in the next calendar month, then the interest payment date will be the immediately preceding Business Day. In each case, except for an interest payment date falling on the maturity date, the interest periods and the interest reset dates for the floating-rate note will be adjusted accordingly to calculate the amount of interest payable on that floating-rate note. Unless otherwise specified in the applicable supplement, if the maturity date for a floating-rate note falls on a day that is not a Business Day, the payment will be made on the next succeeding Business Day, and no additional interest will accrue in respect of the amount payable on the next succeeding Business Day for the period from and after the maturity date.

Unless we specify otherwise in the applicable supplement, “Business Day” means any weekday that is (1) not a legal holiday in New York, New York or Charlotte, North Carolina, (2) not a day on which banking institutions in those cities are authorized or required by law or regulation to be closed and (3) for LIBOR notes, also is a London Banking Day. A “London Banking Day” means any day on which commercial banks are open for business (including dealings in U.S. dollars) in London, England.

Unless otherwise indicated in the applicable supplement, interest payments will include interest accrued from the most recent interest payment date to which interest has been paid or, if no interest has been paid,

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from the issue date, to, but excluding, the next interest payment date or the maturity date, as the case may be.

Interest will be payable to the person in whose name a note is registered at the close of business on the regular record date before each interest payment date. Interest payable at maturity, on a date of redemption or repayment or in connection with the exercise of a Survivor's Option will be payable to the person to whom principal is payable. Unless otherwise specified in the applicable supplement, the regular record date for an interest payment date will be the first day of the calendar month in which the interest payment date occurs, whether or not that day is a Business Day. The principal and interest payable at maturity will be paid to the person in whose name the note is registered at the time of payment.

We will pay any administrative costs imposed by banks in connection with making payments in immediately available funds, but any tax, assessment or governmental charge imposed upon any payments, including, without limitation, any withholding tax, will be the responsibility of the holders of beneficial interests in the notes in respect of which such payments are made.

### **Interest and Interest Rates**

#### *Fixed-Rate Notes*

Each fixed-rate note will begin to accrue interest on its issue date and continue to accrue interest until its stated maturity date or earlier redemption or repayment. The applicable supplement will specify a fixed interest rate per year payable monthly, quarterly, semi-annually or annually. Interest on the fixed-rate notes will be computed on the basis of a 360-day year consisting of twelve 30-day months.

Interest on the fixed-rate notes will be paid as follows:

#### *Interest Payment*

##### *Frequency*

Monthly

Quarterly

Semi-annually

Annually

##### *Interest Payment Dates*

Fifteenth day of each calendar month, beginning in the first calendar month following the month in which the note was issued.

Fifteenth day of every third month, beginning in the third calendar month following the month in which the note was issued.

Fifteenth day of every sixth month, beginning in the sixth calendar month following the month in which the note was issued.

Fifteenth day of every twelfth month, beginning in the twelfth calendar month following the month in which the note was issued.

#### *Floating-Rate Notes*

*Interest Rate Bases.* Each floating-rate note will have an interest rate basis or formula, which may be based on:

- the federal funds rate, in which case the note will be a "federal funds rate note;"
- the London interbank offered rate, in which case the note will be a "LIBOR note;"
- the prime rate, in which case the note will be a "prime rate note;"
- the treasury rate, in which case the note will be a "treasury rate note;" or
- any other interest rate formula as may be specified in the applicable supplement.

The specific terms of each floating-rate note, including the initial interest rate, or the method for determining the initial interest rate, in effect until the first interest reset date, will be specified in the applicable supplement. Thereafter, the interest rate will be determined by

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reference to the specified interest rate basis or formula, plus or minus the spread, if any, and/or multiplied by the spread multiplier, if any. The “spread” is the number of basis points we specify on the floating-rate note to be added to or subtracted from the base rate. The “spread multiplier” is the percentage we specify on the floating-rate note by which the base rate is multiplied in order to calculate the applicable interest rate. A floating-rate note also may be subject to a maximum interest rate limit, or ceiling, and/or a minimum interest rate limit, or floor, on the rate of interest and/or the interest that may accrue during any interest period.

In addition, the interest rate on a floating-rate note may not be higher than the maximum rate permitted by New York law, as that rate may be modified by United States law of general application. Under current New York law, the maximum rate of interest, subject to some exceptions, for any loan in an amount less than \$250,000 is 16% and for any loan in the amount of \$250,000 or more but less than \$2,500,000 is 25% per annum on a simple interest basis. These limits do not apply to loans of \$2,500,000 or more.

*Interest Reset Dates.* The interest rate of each floating-rate note may be reset daily, weekly, monthly, quarterly, semi-annually or annually, as we specify in the applicable supplement. The interest rate in effect from the issue date to the first interest reset date for a floating-rate note will be the initial interest rate, as specified in the applicable supplement or determined in accordance with the method specified in the applicable supplement. The dates on which the interest rate for a floating-rate note will be reset will be specified in the applicable supplement. We refer to each of these dates as an “interest reset date.”

Unless otherwise specified in the applicable supplement, if any interest reset date for any floating-rate note falls on a day that is not a Business Day for the floating-rate note, the interest reset date for the floating-rate note will be postponed to the next day that is a Business Day for the floating-rate note. However, in the case of a LIBOR note, if the next Business Day is in the next

succeeding calendar month, the interest reset date will be the immediately preceding Business Day.

*Interest Determination Dates.* Unless otherwise specified in the applicable supplement, the interest determination date for an interest reset date will be:

- for a federal funds rate note or a prime rate note, the Business Day immediately preceding the interest reset date;
- for a LIBOR note, the second London Banking Day immediately preceding the interest reset date;
- for a treasury rate note, the day of the week in which the interest reset date falls on which Treasury bills, as defined below, of the applicable index maturity would normally be auctioned; and
- for a floating-rate note for which the interest rate is determined by reference to two or more base rates, the interest determination date will be the most recent Business Day that is at least two Business Days prior to the applicable interest reset date for the floating-rate note on which each applicable base rate is determinable.

The “index maturity” is the period to maturity of the instrument for which the interest rate basis is calculated.

Treasury bills usually are sold at auction on Monday of each week, unless that day is a legal holiday, in which case the auction usually is held on the following Tuesday, except that the auction may be held on the preceding Friday. If, as a result of a legal holiday, an auction is held on the preceding Friday, that preceding Friday will be the interest determination date pertaining to the interest reset date occurring in the next succeeding week. The treasury rate will be determined as of that date, and the applicable interest rate will take effect on the applicable interest reset date.

*Calculation Date.* Unless otherwise specified in the applicable supplement, the calculation date for any interest determination date will be the date by which the calculation agent computes the amount of interest owed on a floating-rate note for the related interest period.



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Unless otherwise specified in the applicable supplement, the calculation date will be the earlier of:

- (1) the tenth calendar day after the related interest determination date or, if that day is not a Business Day, the next succeeding Business Day, or
- (2) the Business Day immediately preceding the applicable interest payment date, the maturity date or the redemption or prepayment date, as the case may be.

*Interest Payments.* Except as provided below and unless otherwise provided in the applicable supplement, interest on floating-rate notes will be payable, in the case of floating-rate notes with an interest reset date that resets:

- daily, weekly or monthly — on a date that occurs in each month, as specified in the applicable supplement;
- quarterly — on a date that occurs in each third month, as specified in the applicable supplement;
- semi-annually — on a date that occurs in each of two months of each year, as specified in the applicable supplement; and
- annually — on a date that occurs in a single month of each year, as specified in the applicable supplement.

We refer to each date on which interest is paid on a floating-rate note as an “interest payment date.” Unless we specify otherwise in the applicable supplement, each interest payment due on an interest payment date or the maturity date will include interest accrued from and including the most recent interest payment date to which interest has been paid, or, if no interest has been paid, from the original issue date, to but excluding the next interest payment date or the maturity date, as the case may be (each such period, an “interest period”).

For each floating-rate note, the calculation agent will determine the interest rate for the applicable interest period and will calculate the amount of interest accrued during each interest period. Accrued interest on a floating-rate note is calculated by multiplying the

principal amount of a note by an accrued interest factor. This accrued interest factor is the sum of the interest factors calculated for each day in the period for which accrued interest is being calculated. Unless we specify otherwise in the applicable supplement, the accrued interest factor will be computed and interest will be paid (including payments for partial periods) as follows:

- for federal funds rate notes, LIBOR notes, prime rate notes or any other floating-rate notes other than treasury rate notes, the daily interest factor will be computed by dividing the interest rate in effect on that day by 360; and
- for treasury rate notes, the daily interest factor will be computed by dividing the interest rate in effect on that day by 365 or 366, as applicable.

All dollar amounts used in or resulting from any calculation on floating-rate notes will be rounded to the nearest cent, with one-half cent being rounded upward. Unless we specify otherwise in the applicable supplement, all percentages resulting from any calculation with respect to a floating-rate note will be rounded, if necessary, to the nearest one hundred-thousandth of a percent, with five one-millionths of a percentage point rounded upwards, e.g., 9.876545% (or .09876545) being rounded to 9.87655% (or .0987655).

In determining the base rate that applies to a floating-rate note during a particular interest period, the calculation agent may obtain rate quotes from various banks or dealers active in the relevant market, as described in the descriptions below and/or in the applicable supplement. Those reference banks and dealers may include the calculation agent itself and its affiliates, as well as any underwriter, dealer or agent participating in the distribution of the relevant floating-rate notes and its affiliates, and they may also include our affiliates.

At the request of the holder of any floating-rate note, the calculation agent will provide the interest rate then in effect for that floating-rate note and, if different, the interest rate that will become effective on the next interest reset date as a result of a determination made on the

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most recent interest determination date with respect to the floating-rate note.

*LIBOR Notes.* Each LIBOR note will bear interest at the LIBOR base rate, adjusted by any spread or spread multiplier, as specified in the applicable supplement. The LIBOR base rate will be the London interbank offered rate for deposits in U.S. dollars, as specified in the applicable supplement. Except as provided below, LIBOR for each interest period will be calculated on the interest determination date for the related interest reset date.

As determined by the calculation agent, LIBOR for any interest determination date will be the arithmetic mean of the offered rates for deposits in U.S. dollars having the index maturity described in the applicable supplement, commencing on the related interest reset date, as the rates appear on the Reuters LIBOR screen page designated in the applicable supplement as of 11:00 A.M., London time, on that interest determination date, if at least two offered rates appear on the designated Reuters LIBOR screen page, except that, if the designated Reuters LIBOR screen page only provides for a single rate, that single rate will be used.

If fewer than two of the rates described above appear on that page or no rate appears on any page on which only one rate normally appears, then the calculation agent will determine LIBOR as follows:

- The calculation agent will select four major banks in the London interbank market, which may include us, our affiliates, or affiliates of the agents. On the interest determination date, those four banks will be requested to provide their offered quotations for deposits in U.S. dollars having an index maturity specified in the applicable supplement commencing on the interest reset date and in a representative amount to prime banks in the London interbank market at approximately 11:00 A.M., London time.
- If at least two quotations are provided, the calculation agent will determine LIBOR as the arithmetic mean of those quotations.

- If fewer than two quotations are provided, the calculation agent will select three major banks in New York City, which may include us, our affiliates, or affiliates of the agents. On the interest reset date, those three banks will be requested to provide their offered quotations for loans in U.S. dollars having an index maturity specified in the applicable supplement commencing on the interest reset date and in a representative amount to leading European banks at approximately 11:00 A.M., New York City time. The calculation agent will determine LIBOR as the arithmetic mean of those quotations.
- If fewer than three New York City banks selected by the calculation agent are quoting rates, LIBOR for that interest period will remain LIBOR then in effect on the interest determination date.

“Representative amount” means an amount that, in the calculation agent’s judgment, is representative of a single transaction in the relevant market at the relevant time.

“Reuters page” means the display on the Thomson Reuters service, or any successor or replacement service (“Reuters”), on the page or pages specified in this prospectus or the applicable supplement, or any successor or replacement page or pages on that service.

*Treasury Rate Notes.* Each treasury rate note will bear interest at the treasury rate plus or minus any spread or multiplied by any spread multiplier described in the applicable supplement. Except as provided below, the treasury rate for each interest period will be calculated on the interest determination date for the related interest reset date.

The “treasury rate” for any interest determination date will be the rate set at the auction of direct obligations of the United States (“Treasury bills”) having the index maturity described in the applicable supplement, as specified under the caption “INVEST RATE” on the display on Reuters on screen page USAUCTION10 or USAUCTION11.

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If the rate cannot be determined as described above, the treasury rate will be determined as follows:

(1) If the rate is not displayed on Reuters by 3:00 P.M., New York City time, on the related calculation date, the treasury rate will be the bond equivalent yield, as defined below, of the auction rate of the applicable Treasury bills as announced by the U.S. Department of the Treasury.

(2) If the alternative rate described in paragraph (1) above is not announced by the U.S. Department of the Treasury, or if the auction is not held, the treasury rate will be the bond equivalent yield of the rate on the particular interest determination date of the applicable Treasury bills as published in H.15(519) under the caption "U.S. government securities/Treasury bills (Secondary Market)."

(3) If the alternative rate referred to in (2) above is not announced by the U.S. Department of the Treasury, the treasury rate will be the bond equivalent yield of the rate on the particular interest determination date of the applicable Treasury bills as published in H.15 Daily Update, or another recognized electronic source used for the purpose of displaying the applicable rate, under the caption "U.S. Government Securities/Treasury Bills (secondary market)."

(4) If the alternative rate referred to in (3) above is not published by 3:00 P.M., New York City time, on the related calculation date, the treasury rate will be the rate on the particular interest determination date calculated by the calculation agent as the bond equivalent yield of the arithmetic mean of the secondary market bid rates, as of approximately 3:30 P.M., New York City time, on that interest determination date, of three primary United States government securities dealers, which may include the agent or its affiliates, selected by the calculation agent after consultation with us, for the issue of Treasury bills with a remaining maturity closest to the particular index maturity.

(5) If the dealers selected by the calculation agent are not quoting as mentioned in (4) above, the treasury rate will be the treasury rate in effect on the particular interest determination date.

The bond equivalent yield will be calculated using the following formula:

$$\text{Bond equivalent yield} = \frac{D \times N}{360 - (D \times M)} \times 100$$

where "D" refers to the applicable annual rate for Treasury bills quoted on a bank discount basis and expressed as a decimal, "N" refers to 365 or 366, as the case may be, and "M" refers to the actual number of days in the applicable interest period.

"H.15(519)" means the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System at <http://www.federalreserve.gov/releases/h15/current/>, or any successor site or publication.

"H.15 Daily Update" means the daily update of H.15(519), available through the website of the Board of Governors of the Federal Reserve System at [www.federalreserve.gov/releases/h15/update/](http://www.federalreserve.gov/releases/h15/update/), or any successor site or publication.

*Federal Funds Rate Notes.* Each federal funds rate note will bear interest at the federal funds rate plus or minus any spread or multiplied by any spread multiplier described in the applicable supplement. Except as provided below, the federal funds rate for each interest period will be calculated on the interest determination date for the related interest reset date.

If "Federal Funds (Effective) Rate" is specified in the applicable supplement, the federal funds rate for any interest determination date will be the rate on that date for U.S. dollar federal funds, as published in H.15 Daily Update under the heading "Federal funds (effective)" and displayed on Reuters on page FEDFUNDS1 under the heading "EFFECT", referred to as "Reuters Page FedFunds1." If this rate is not published in H.15 Daily Update by 3:00 P.M., New York City time, on the

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related calculation date, or does not appear on Reuters Page FedFunds1, the federal funds rate will be the rate on that interest determination date as published in H.15 Daily Update, or any other recognized electronic source for the purposes of displaying the applicable rate, under the caption “Federal funds (effective).” If this alternate rate is not published in H.15 Daily Update, or other recognized electronic source for the purpose of displaying the applicable rate, by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the federal funds rate to be the average of the rates for the last transaction in overnight U.S. dollar federal funds quoted prior to 9:00 A.M., New York City time, on the business day following that interest determination date, by each of three leading brokers of U.S. dollar federal funds transactions in New York City, selected by the calculation agent, after consultation with us. If fewer than three brokers selected by the calculation agent are so quoting, the federal funds rate will be the federal funds rate in effect on that interest determination date.

If “Federal Funds Open Rate” is specified in the applicable supplement, the federal funds rate will be the rate on that interest determination date set forth under the heading “Federal Funds” opposite the caption “Open” and displayed on Reuters on Page 5, referred to as “Reuters Page 5,” or if that rate does not appear on Reuters Page 5 by 3:00 P.M., New York City time, on the related calculation date, the federal funds rate will be the rate on that interest determination date displayed on the FFPREBON Index page on Bloomberg L.P. (“Bloomberg”), which is the Fed Funds Opening Rate as reported by Prebon Yamane (or a successor) on Bloomberg. If the alternate rate described in the preceding sentence is not displayed on the FFPREBON Index page on Bloomberg, or any other recognized electronic source for the purpose of displaying the applicable rate, by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the federal funds rate to be the average of the rates for the last transaction in overnight U.S. dollar federal funds,

quoted prior to 9:00 A.M., New York City time, on that interest determination date, by each of three leading brokers of U.S. dollar federal funds transactions in New York City, selected by the calculation agent, after consultation with us. If fewer than three brokers selected by the calculation agent are quoting as described above, the federal funds rate will be the federal funds rate in effect on that interest determination date.

If “Federal Funds Target Rate” is specified in the applicable supplement, the federal funds rate will be the rate on that interest determination date for U.S. dollar federal funds displayed on the FDTR Index page on Bloomberg. If that rate does not appear on the FDTR Index page on Bloomberg by 3:00 P.M., New York City time, on the calculation date, the federal funds rate for the applicable interest determination date will be the rate for that day appearing on Reuters on page USFFTARGET=, referred to as “Reuters Page USFFTARGET=.” If that rate does not appear on the FDTR Index page on Bloomberg or is not displayed on Reuters Page USFFTARGET= by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the federal funds rate to be the average of the rates for the last transaction in overnight U.S. dollar federal funds, quoted prior to 9:00 A.M., New York City time, on that interest determination date, by each of three leading brokers of U.S. dollar federal funds transactions in New York City, selected by the calculation agent, after consultation with us. If fewer than three brokers selected by the calculation agent are quoting as described above, the federal funds rate will be the federal funds rate in effect on that interest determination date.

*Prime Rate Notes.* Each prime rate note will bear interest at the prime rate plus or minus any spread or multiplied by any spread multiplier described in the applicable supplement. Except as provided below, the prime rate for each interest period will be calculated on the interest determination date for the related interest reset date.

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The “prime rate” for any interest determination date will be the prime rate or base lending rate on that date, as published in H.15(519) prior to 3:00 P.M., New York City time, on the related calculation date for that interest determination date under the heading “Bank prime loan.”

The following procedures will be followed if the prime rate cannot be determined as described above:

- If the rate is not published in H.15(519) by 3:00 P.M., New York City time, on the related calculation date, then the prime rate will be the rate as published in H.15 Daily Update, or any other recognized electronic source used for the purpose of displaying the applicable rate, under the caption “Bank prime loan.”
- If the alternative rate described above is not published in H.15 Daily Update or another recognized electronic source by 3:00 P.M., New York City time, on the related calculation date, then the calculation agent will determine the prime rate to be the arithmetic mean of the rates of interest publicly announced by each bank that appears on Reuters on page USPRIME1, as defined below, as that bank’s prime rate or base lending rate as in effect as of 11:00 A.M., New York City time, on that interest determination date.
- If fewer than four rates appear on Reuters on page USPRIME1 for that interest determination date, by 3:00 P.M., New York City time, then the calculation agent will determine the prime rate to be the average of the prime rates or base lending rates furnished in New York City by three substitute banks or trust companies (all organized under the laws of the United States or any of its states and having total equity capital of at least \$500,000,000) selected by the calculation agent after consultation with us.
- If the banks selected by the calculation agent are not quoting as described above, the prime rate will remain the prime rate then in effect on the interest determination date.

“Reuters page USPRIME1” means the display designated as page “USPRIME1” on Reuters for the purpose of displaying prime rates or base lending rates of major U.S. banks.

### *Indexed Notes*

We may issue indexed notes, in which the amount of principal, premium, if any, interest, or other amounts payable, if any, is determined by reference, either directly or indirectly, to the price, performance or levels of one or more, or any combination of:

- securities;
- currencies or composite currencies;
- commodities;
- interest rates;
- inflation rates;
- stock or other indices;
- other formulae, financial or market measures or reference assets;

in each case as specified in the applicable supplement. In this prospectus, we may refer to these as “reference assets.”

Holders of some types of indexed notes may receive a principal amount at maturity that is greater than or less than the face amount of the notes, depending upon the relative value at maturity of the reference asset or underlying obligation. The value of the applicable index will fluctuate over time.

We will provide the method for determining the principal, premium, if any, interest, or other amounts payable, if any, in respect of that indexed note, certain historical information with respect to the specified index or indexed items and specific risk factors relating to that particular type of indexed note in the applicable supplement. The applicable supplement also will describe the tax considerations associated with an investment in the indexed notes if they differ from those described in the section entitled “Tax Consequences to U.S. Holders” beginning on page 30.

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The applicable supplement for indexed notes also will identify the calculation agent that will calculate the amounts payable with respect to the indexed notes, which calculation agent may be one of our affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated. Upon the request of the holder of an indexed note, the calculation agent will provide, if applicable, the current index, principal, premium, if any, rate of interest, interest payable, or other amounts payable, if any, in connection with the indexed note.

An indexed note may provide either for cash settlement or for physical settlement by delivery of the indexed security or securities, or other securities of the types listed above. An indexed note also may provide that the form of settlement may be determined at our option or the holder's option. Some indexed notes may be exchangeable prior to maturity, at our option or the holder's option, for the related securities.

### **Redemption and Repayment**

Unless we otherwise provide in the applicable supplement, the notes will not be redeemable or repayable prior to their stated maturity dates.

If the applicable supplement states that the note is redeemable at our option prior to its stated maturity date, then on the date or dates specified in the supplement, we may redeem any of those notes, either in whole or from time to time in part, by giving written notice to the holder of the note being redeemed at least 30 but not more than 60 days before the redemption date or dates specified in that supplement.

If the applicable supplement states that your note is repayable at your option prior to its stated maturity date, we will require receipt of notice of the request for repayment at least 30 but not more than 60 days prior to the date or dates specified in that supplement. We also must receive the completed form entitled "Option to Elect Repayment." Exercise of the repayment option by the holder of a note will be irrevocable.

Since the notes will be represented by a global note, DTC (as the depository) or its nominee will be treated as

the holder of the notes; therefore DTC or its nominee will be the only entity that receives notices of redemption of notes from us, in the case of our redemption of notes, and will be the only entity that can exercise the right to repayment of notes, in the case of optional repayment. See the section entitled "Registration and Settlement" beginning on page 27.

To ensure that DTC or its nominee will timely exercise a right to repayment with respect to a particular beneficial interest in a note, the beneficial owner of such interest must instruct the broker or other direct or indirect participant through which it holds a beneficial interest in the note to notify DTC or its nominee of its desire to exercise a right to repayment. Because different firms have different cut-off times for accepting instructions from their customers, each beneficial owner should consult the broker or other direct or indirect participant through which it holds the beneficial interest in a note to determine the cut-off time by which the instruction must be given for timely notice to be delivered to DTC or its nominee. Conveyance of notices and other communications by DTC or its nominee to participants, by participants to indirect participants and by participants and indirect participants to beneficial owners of the notes will be governed by agreements among them and any applicable statutory or regulatory requirements.

The actual redemption or repayment of a note normally will occur on the interest payment date or dates following receipt of a valid notice. Unless otherwise specified in the applicable supplement, the redemption or repayment price will equal 100% of the principal amount of the note plus accrued and unpaid interest to the date or dates of redemption or repayment. Notes will not be redeemed in part in increments less than their minimum denominations.

We may at any time purchase notes, including those otherwise tendered for repayment by a holder, or a holder's duly authorized representative through the exercise of the Survivor's Option described below, at any price or prices in the open market or otherwise. If

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we purchase notes in this manner, we will have the discretion to either hold or resell these notes or surrender these notes to the trustee for cancellation.

To the extent then required by applicable laws or regulations, subordinated notes may not be redeemed or repaid prior to maturity without the requisite prior approvals, if any, from applicable regulators.

### **Survivor's Option**

The "Survivor's Option" is a provision in a note in which we agree to repay that note, if requested by the authorized representative of the beneficial owner of that note, following the death of the beneficial owner of the note, so long as the note was acquired by the beneficial owner at least six months prior to the request. The supplement relating to any note will state whether the Survivor's Option applies to that note.

If the Survivor's Option is applicable to a note, upon the valid exercise of the Survivor's Option and the proper tender of the note for repayment, we will repay that note, in whole or in part, at a price equal to 100% of the principal amount of the deceased beneficial owner's beneficial interest in the note plus any accrued and unpaid interest to the date of repayment.

To be valid, the Survivor's Option must be exercised by or on behalf of the person who has authority to act on behalf of the deceased beneficial owner of the note under the laws of the applicable jurisdiction (including, without limitation, the personal representative of or the executor of the estate of the deceased beneficial owner or the surviving joint owner with the deceased beneficial owner).

A beneficial owner of a note is a person who has the right, immediately prior to such person's death, to receive the proceeds from the disposition of that note, as well as the right to receive payment of the principal of the note.

The death of a person holding a beneficial ownership interest in a note as a joint tenant or tenant by the entirety with another person, or as a tenant in common with the deceased holder's spouse, will be deemed the

death of a beneficial owner of that note, and the entire principal amount of the note held in this manner will be subject to repayment by us upon exercise of the Survivor's Option. However, the death of a person holding a beneficial ownership interest in a note as tenant in common with a person other than such deceased holder's spouse will be deemed the death of a beneficial owner only with respect to such deceased person's interest in the note, and only the deceased beneficial owner's percentage interest in the principal amount of the note will be subject to repayment.

The death of a person who, during his or her lifetime, was entitled to substantially all of the beneficial ownership interests in a note will be deemed the death of the beneficial owner of that note for purposes of the Survivor's Option, regardless of whether that beneficial owner was the registered holder of the note, if the beneficial ownership interest can be established to the satisfaction of the trustee. A beneficial ownership interest will be deemed to exist in typical cases of nominee ownership, ownership under the Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, community property or other joint ownership arrangements between a husband and wife. In addition, the beneficial ownership interest in a note will be deemed to exist in custodial and trust arrangements where one person has all of the beneficial ownership interest in that note during his or her lifetime.

We have the discretionary right to limit the aggregate principal amount of notes as to which exercises of the Survivor's Option will be accepted by us from all authorized representatives of deceased beneficial owners in any calendar year to an amount equal to the greater of \$2,000,000 or 2% of the principal amount of all notes outstanding as of the end of the most recent calendar year. We also have the discretionary right to limit the aggregate principal amount of notes as to which exercises of the Survivor's Option will be accepted by us from the authorized representative for any individual deceased beneficial owner of notes in any calendar year to \$250,000. In addition, we will not permit the exercise

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of the Survivor's Option for a principal amount less than \$1,000, and we will not permit the exercise of the Survivor's Option if such exercise will result in a note with a principal amount of less than \$1,000 outstanding. If, however, the original principal amount of a note was less than \$1,000, the authorized representative of the deceased beneficial owner of the note may exercise the Survivor's Option, but only for the full principal amount of the note.

An otherwise valid election to exercise the Survivor's Option may not be withdrawn. An election to exercise the Survivor's Option will be accepted in the order that it was received by the trustee, except for any note the acceptance of which would contravene any of the limitations described above. Notes accepted for repayment through the exercise of the Survivor's Option normally will be repaid on the first interest payment date that occurs 20 or more calendar days after the date of the acceptance. For example, if the acceptance date of a note tendered pursuant to a valid exercise of the Survivor's Option is March 1, 2015, and interest on that note is paid monthly, we would normally, at our option, repay or repurchase that note on the interest payment date occurring on April 15, 2015, because the March 15, 2015 interest payment date would occur less than 20 days from the date of acceptance. Each tendered note that is not accepted in a calendar year due to the application of any of the limitations described in the preceding paragraph will be deemed to be tendered in the following calendar year in the order in which all such notes were originally tendered. If a note tendered through a valid exercise of the Survivor's Option is not accepted, the trustee will deliver a notice by first-class mail to the registered holder, at that holder's last known address as indicated in the note register, that states the reason that note has not been accepted for repayment.

Since the notes will be represented by a global note, DTC, as depository, or its nominee will be treated as the holder of the notes and will be the only entity that can exercise the Survivor's Option for such notes. To obtain repayment of a note pursuant to exercise of the

Survivor's Option, the deceased beneficial owner's authorized representative must provide the following items to the broker or other entity through which the beneficial interest in the note is held by the deceased beneficial owner:

- appropriate evidence satisfactory to the trustee that:
  - (a) the deceased was the beneficial owner of the note at the time of death and his or her interest in the note was acquired by the deceased beneficial owner at least six months prior to the request for repayment,
  - (b) the death of the beneficial owner has occurred and the date of death, and
  - (c) the representative has authority to act on behalf of the deceased beneficial owner;
- if the beneficial interest in the note is held by a nominee of the deceased beneficial owner, a certificate satisfactory to the trustee from the nominee attesting to the deceased's beneficial ownership of that note;
- a written request for repayment signed by the authorized representative of the deceased beneficial owner with the signature guaranteed by a member firm of a registered national securities exchange or of the Financial Industry Regulatory Authority, Inc., or FINRA, or a commercial bank or trust company having an office or correspondent in the United States;
- if applicable, a properly executed assignment or endorsement;
- tax waivers and any other instruments or documents that the trustee reasonably requires in order to establish the validity of the beneficial ownership of the note and the claimant's entitlement to payment; and
- any additional information the trustee requires to evidence satisfaction of any conditions to the exercise of the Survivor's Option or to document beneficial ownership or authority to make the election and to cause the repayment of the note.



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In turn, the broker or other entity will deliver each of these items to the trustee and will certify to the trustee that the broker or other entity represents the deceased beneficial owner.

We retain the right to limit the aggregate principal amount of notes for which exercises of the Survivor's Option will be accepted in any one calendar year as described above. All other questions regarding the eligibility or validity of any exercise of the Survivor's Option will be determined by the trustee, in its sole discretion, which determination will be final and binding on all parties.

The broker or other entity will be responsible for disbursing payments received from the trustee to the authorized representative. See the section entitled "Registration and Settlement" beginning on page 27.

Forms for the exercise of the Survivor's Option may be obtained from The Bank of New York Mellon Trust Company, N.A., 2001 Bryan Street, 10th Floor, Dallas, Texas 75201, Attention: Survivor Option Department, 1-800-275-2048.

### **Subordination**

The subordinated notes will be subordinated in right of payment to our "Senior Indebtedness" to the extent and in the manner set forth in the Subordinated Indenture, as described below. The Subordinated Indenture generally defines "Senior Indebtedness" as any indebtedness for money borrowed, including all of our indebtedness for borrowed and purchased money, all of our obligations arising from off-balance sheet guarantees and direct credit substitutes and our obligations associated with derivative products such as interest and foreign exchange rate contracts and commodity contracts, that were outstanding on the date we executed the Subordinated Indenture, or were created, incurred or assumed after that date, and all deferrals, renewals, extensions and refundings of that indebtedness or obligations, unless the instrument creating or evidencing the indebtedness provides that the indebtedness is subordinate in right of payment to any of our other

indebtedness. Our senior notes will be Senior Indebtedness. As of September 30, 2014, on a non-consolidated basis, we had approximately \$154 billion of senior long-term debt and certain short-term borrowings. Senior Indebtedness also includes our obligations under letters of credit, guarantees, foreign exchange contracts and interest rate swap contracts, none of which are included in such amount. In addition, holders of subordinated notes may be fully subordinated to interests held by the U.S. government in the event that we enter into a receivership, insolvency, liquidation or similar proceeding.

We will not be able to make any principal, premium or interest payments on the subordinated notes or repurchase our subordinated notes if there is a default or event of default on any Senior Indebtedness that would allow acceleration of the maturity thereof and that is not remedied and we and the trustee for the Subordinated Indenture (the "Subordinated Trustee") receive notice of this from the holders of at least 10% in principal amount of any kind or category of any Senior Indebtedness or the Subordinated Trustee receives notice from us.

If any subordinated note is declared due and payable before the stated maturity date or in connection with a distribution of our assets to creditors pursuant to a dissolution, winding up, liquidation or reorganization, any principal, premium or interest owing to holders of our Senior Indebtedness will be paid to those holders before any holders of subordinated notes will be paid. In addition, if such amounts were previously paid to the holder of a subordinated note or the Subordinated Trustee, the holders of our Senior Indebtedness will have first rights to such amounts previously paid.

Until all Senior Indebtedness is repaid in full, the holders of subordinated notes will be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of our assets.

Due to differing subordination provisions in various series of subordinated debt securities issued by us and our predecessors, in the event of a dissolution, winding up, liquidation, reorganization, insolvency, receivership

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or other proceeding, holders of the subordinated notes may receive more or less, ratably, than holders of some of our other series of our outstanding subordinated debt securities.

### **Sale or Issuance of Capital Stock of a Principal Subsidiary Bank**

The Senior Indenture prohibits the issuance, sale or other disposition of capital stock, or securities convertible into, or options, warrants or rights to acquire, capital stock, of any Principal Subsidiary Bank (as defined below) or of any subsidiary which owns shares of capital stock, or securities convertible into, or options, warrants or rights to acquire capital stock, of any Principal Subsidiary Bank, with the following exceptions:

- sales of directors' qualifying shares;
- sales or other dispositions for fair market value, if, after giving effect to the disposition and to the conversion of any shares or securities convertible into capital stock of a Principal Subsidiary Bank, we would own at least 80% of each class of the capital stock of that Principal Subsidiary Bank;
- sales or other dispositions made in compliance with an order of a court or regulatory authority of competent jurisdiction;
- any sale by a Principal Subsidiary Bank of additional shares of its capital stock, securities convertible into shares of its capital stock, or options, warrants or rights to subscribe for or purchase shares of its capital stock, to its shareholders at any price, so long as before the sale we owned, directly or indirectly, securities of the same class and immediately after the sale we owned, directly or indirectly, at least as great a percentage of each class of securities of that Principal Subsidiary Bank as we owned before such sale of additional securities; and
- any issuance of shares of capital stock, or securities convertible into or options, warrants or rights to subscribe for or purchase shares of capital stock, of

a Principal Subsidiary Bank or any subsidiary which owns shares of capital stock, or securities convertible into or options, warrants or rights to acquire capital stock, of any Principal Subsidiary Bank, to us or our wholly owned subsidiary.

A "Principal Subsidiary Bank" is defined in the Senior Indenture as any of our banking subsidiaries (other than any credit card bank) with total assets equal to more than 10% of our total consolidated assets. At present, Bank of America, N.A. is our only Principal Subsidiary Bank.

There is no comparable covenant in the Subordinated Indenture.

### **Waiver of Covenants**

The holders of a majority in principal amount of the notes affected that are outstanding under each of the Indentures may waive compliance with certain covenants or conditions of such Indentures.

### **Limitation on Mergers and Sales of Assets**

Each indenture generally permits a consolidation or merger between us and another entity. It also permits the sale or transfer by us of all or substantially all of our assets. These transactions are permitted if:

- the resulting or acquiring entity, if other than us, is organized and existing under the laws of the United States or any state or the District of Columbia and expressly assumes all of our obligations under that indenture; and
- immediately after the transaction, we (or any successor company) are not in default in the performance of any covenant or condition under that indenture.

Upon any consolidation, merger, sale, or transfer of this kind, the resulting or acquiring entity will be substituted for us in the applicable indenture with the same effect as if it had been an original party to that indenture. As a result, the successor entity may exercise our rights and powers under the indenture.

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### **Modification of the Indentures**

We and the trustee may modify each of the Senior Indenture and the Subordinated Indenture with the consent of the holders of at least 66 2/3% of the aggregate principal amount of the notes at the time outstanding under the applicable Indenture, voting as one class. However, we cannot modify either Indenture to extend the fixed maturity of, reduce the principal amount or redemption premium of, or reduce the rate of or extend the time of payment of interest on, any note without the consent of each noteholder. Furthermore, we cannot modify either Indenture to reduce the percentage of notes required to consent to modification without the consent of all holders of the notes outstanding under that Indenture.

In addition, we and the applicable trustee may execute supplemental indentures in limited circumstances without the consent of any holders of outstanding notes.

### **Meetings and Action by Noteholders**

The trustee may call a meeting in its discretion or upon request by us or the holders of at least 10% in principal amount of the notes outstanding under the applicable Indenture upon the giving of notice. If a meeting of noteholders is duly held, any resolution raised or decision taken will be binding on all holders of notes outstanding under that Indenture. The holders of a majority in principal amount of each series of notes outstanding under the applicable Indenture may direct the time, method and place for conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee under that Indenture, subject to certain limitations described in the applicable Indenture.

### **Defaults and Rights of Acceleration**

The Senior Indenture defines an event of default as any one of the following events:

- our failure to pay principal or premium when due on any notes;

- our failure to pay interest on any notes within 30 days after the interest becomes due;
- our breach of any of our other covenants contained in the senior notes or the Senior Indenture that is not cured within 90 days after written notice to us by the trustee for the Senior Indenture (the "Senior Trustee"), or to us and the Senior Trustee by the holders of at least 25% in principal amount of all senior notes then outstanding under the Senior Indenture and affected thereby; and
- certain events involving our bankruptcy, insolvency or liquidation.

The Subordinated Indenture defines an event of default solely as our bankruptcy under federal bankruptcy laws, whether voluntary or involuntary (and, in the case of our involuntary bankruptcy, continuing for a period of 60 consecutive days).

If an event of default occurs and is continuing, either the trustee or the holders of 25% in principal amount of the notes outstanding under the applicable Indenture may declare the principal amount of all such notes to be due and payable immediately. The holders of a majority in principal amount of the notes then outstanding under the applicable Indenture may annul the declaration of an event of default and waive past defaults.

Payment of principal of the subordinated notes may not be accelerated in the case of a default in the payment of principal or any premium or interest or the performance of any other covenants.

### **Collection of Indebtedness**

If we fail to pay principal or premium on the notes or if we are over 30 days late on an interest payment on the notes, the trustee can demand that we pay to it, for the benefit of the noteholders under the applicable Indenture, the amount which is due and payable on those notes. If we fail to pay the required amount on demand, the trustee may take appropriate action, including instituting judicial proceedings.

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In addition, a holder of a debt security also may file suit to enforce our obligation to make payment of principal, any premium, interest, or other amounts due on that debt security regardless of the actions taken by the trustee.

The holders of a majority in principal amount of the notes then outstanding under an Indenture may direct the time, method and place of conducting any proceeding for any remedy available to the trustee under that Indenture. The trustee, however, will be entitled to receive from the holders' reasonable indemnity against expenses and liabilities.

At least annually, we are required to file with the trustee a certificate stating that we are not in default with any of the terms of the respective Indentures.

### **Reopening**

We have the ability to "reopen," or increase after the issuance date, the principal amount of a particular series of our notes without notice to the holders of existing notes by selling additional notes having the same terms provided that such additional notes shall be fungible for U.S. federal income tax purposes. However, any new notes of this kind may have a different offering price and may begin to bear interest on a different date.

### **Notices**

We will provide to noteholders any required notices by first-class mail to the addresses of the holders as they appear in the note register.

### **Concerning the Trustees**

We and our subsidiaries have from time to time maintained deposit accounts and conducted other banking transactions with The Bank of New York Mellon Trust Company, N.A. and its affiliated entities in the ordinary course of business. The Bank of New York Mellon Trust Company, N.A. also serves as trustee for a number of series of our outstanding indebtedness under other indentures.

## **REGISTRATION AND SETTLEMENT**

### **Book-Entry System**

All of the notes we offer will be issued in book-entry only form. This means that we will not issue certificated notes in definitive form, which we refer to as "definitive notes", except in the limited case described below. Instead, we will issue global notes in registered form (each, a "Global Note"). Each Global Note is held through DTC, as depository, and is registered in the name of Cede & Co., as nominee of DTC. Accordingly, Cede & Co. will be the holder of record of all of the notes. Each note represents a beneficial interest in that Global Note.

Beneficial interests in a Global Note are shown on, and transfers are effected through, records maintained by DTC or its participants. In order to own a beneficial interest in a note, you must be an institution that has an account with DTC, which we refer to as a "participant" in DTC, or have a direct or indirect account with such an institution. Transfers of ownership interests in the notes will be accomplished by making entries in DTC participants' books acting on behalf of beneficial owners. Beneficial owners of these notes will not receive definitive notes representing their ownership interest, except in the limited circumstances described below.

So long as DTC or its nominee is the registered owner of a Global Note, DTC or its nominee, as the case may be, will be the sole holder of the notes represented thereby for all purposes, including payment of principal and interest, under the applicable Indenture. Except as otherwise provided below, the beneficial owners of the notes are not entitled to receive physical delivery of definitive notes and will not be considered the holders of the notes for any purpose under the applicable Indenture. Accordingly, each beneficial owner must rely on the procedures of DTC and, if such beneficial owner is not a DTC participant, on the procedures of the DTC participant through which such beneficial owner owns its interest in order to exercise any rights of a holder of a note under the applicable Indenture. The laws of some

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jurisdictions require that certain purchasers of notes take physical delivery of such notes in certificated or definitive form. Those limits and laws may impair the ability to transfer beneficial interests in the notes.

Unless otherwise specified in the relevant Global Note or the applicable Indenture, each Global Note representing notes will be exchangeable for definitive notes of like tenor and terms and of differing authorized denominations in a like aggregate principal amount, only if (1) DTC notifies us that it is unwilling or unable to continue as depository for the Global Notes or we become aware that DTC has ceased to be a clearing agency registered under the Securities Exchange Act of 1934 and, in any such case, we fail to appoint a successor to DTC within 90 calendar days or (2) we, in our sole discretion, determine that the Global Notes shall be exchangeable for definitive notes. DTC's current rules provide that it would notify its participants of a request by us to terminate a Global Note, but will only withdraw beneficial interests from the Global Note at the request of each DTC participant. Upon any such exchange, the definitive notes will be registered in the names of the beneficial owners of the Global Note representing the notes.

### **The Depository Trust Company**

The following is based on information furnished by DTC:

DTC will act as securities depository for the notes. The notes will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Global Note will be issued for each issue of notes, each in the aggregate principal amount of the issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such note.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments that DTC's participants ("direct participants") deposit with DTC. DTC also facilitates the post-trade settlement among direct participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between direct participants' accounts. This eliminates the need for physical movement of securities certificates. Direct participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly ("indirect participants"). The DTC Rules applicable to its participants are on file with the SEC. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). Information on that website is not included or incorporated by reference herein.

Purchases of the notes under the DTC system must be made by or through direct participants, which will receive a credit for the notes on DTC's records. The ownership interest of each actual purchaser of each note,

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or beneficial owner, is in turn to be recorded on the direct and indirect participants' records. Beneficial owners will not receive written confirmation from DTC of their purchase. Beneficial owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the direct or indirect participant through which the beneficial owner entered into the transaction. Transfers of beneficial interests in the notes are to be accomplished by entries made on the books of direct and indirect participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their beneficial interests in the notes, except in the event that use of the book-entry system for the notes is discontinued.

To facilitate subsequent transfers, all notes deposited by direct participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the notes with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual beneficial owners of the notes; DTC's records reflect only the identity of the direct participants to whose accounts such notes are credited, which may or may not be the beneficial owners. The direct and indirect participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial owners of the notes may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the notes, such as redemptions, tenders, defaults and proposed amendments to the note documents. For example, beneficial owners of the notes may wish to ascertain that

the nominee holding the notes for their benefit has agreed to obtain and transmit notices to beneficial owners. In the alternative, beneficial owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

None of DTC, Cede & Co. or any other DTC nominee will consent or vote with respect to the notes unless authorized by a direct participant in accordance with DTC's Money Market Instrument, or MMI, procedures. Under its usual procedures, DTC mails an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those direct participants to whose accounts the notes are credited on the regular record date (identified in a listing attached to the omnibus proxy).

We will pay principal and any premium, interest payments or other amounts payable on the notes in immediately available funds directly to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit direct participants' accounts, upon DTC's receipt of funds and corresponding detail information from us or the trustee, on the applicable payment date in accordance with their respective holdings shown on DTC's records. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such participant and not our responsibility or the responsibility of DTC or the trustee, subject to any statutory or regulatory requirements that may be in effect from time to time. Payment of principal, any premium, interest or other amounts payable to Cede & Co. or any other nominee as may be requested by an authorized representative of DTC, is our responsibility or the responsibility of the trustee, disbursement of such payments to direct participants will be the responsibility of DTC, and disbursement of such payments to the beneficial owners

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will be the responsibility of the direct or indirect participants.

We will send any redemption notices to DTC. If less than all of the notes are being redeemed, DTC's practice is to determine by lot the amount of the interest of each direct participant in such issue to be redeemed.

DTC may discontinue providing its services as depository for the notes at any time by giving us reasonable notice. Under such circumstances, if a successor securities depository is not obtained, we will print and deliver certificated notes in definitive registered form.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be reliable, but neither we nor any agent takes responsibility for its accuracy.

### **Registration, Transfer and Payment of Certificated Notes**

If we ever issue certificated notes in definitive form, those notes may be presented for registration, transfer and payment at the office of the registrar or at the office of any transfer agent designated and maintained by us. We have originally designated The Bank of New York Mellon Trust Company, N.A., Global Corporate Trust, 111 Sanders Creek Parkway, East Syracuse, New York 13057 to act in those capacities for both senior and subordinated notes. The registrar or transfer agent will make the transfer or registration only if it is satisfied with the documents of title and identity of the person making the request. There will not be a service charge for any exchange or registration of transfer of the notes, but we may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the exchange. At any time we may change transfer agents or approve a change in the location through which any transfer agent acts. We also may designate additional transfer agents for any notes at any time.

We will not be required to (1) issue, exchange or register the transfer of any note to be redeemed for a period of 15 days before the selection of the notes to be

redeemed or (2) exchange or register the transfer of any note that was selected, called or is being called for redemption, except the unredeemed portion of any note being redeemed in part.

We will pay principal, any premium, if any, interest and other amounts payable, if any, on any certificated notes in definitive form at the offices of the paying agents we may designate from time to time. Generally, we will pay interest on a note on any interest payment date to the person in whose name the note is registered at the close of business on the regular record date for that payment.

### **TAX CONSEQUENCES TO U.S. HOLDERS**

The following is a summary of the material U.S. federal income tax considerations of the acquisition, ownership and disposition of the notes. The following discussion is not exhaustive of all possible tax considerations. This summary is based upon the Internal Revenue Code of 1986, as amended (the "Code"), regulations promulgated under the Code by the U.S. Treasury Department (including proposed and temporary regulations), rulings, current administrative interpretations and official pronouncements of the IRS and judicial decisions, all as currently in effect and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below.

This summary is for general information only, and does not purport to discuss all aspects of U.S. federal income taxation that may be important to a particular holder in light of its investment or tax circumstances or to holders subject to special tax rules, such as: partnerships, subchapter S corporations or other pass-through entities, any government (or instrumentality or agency thereof), banks, financial institutions, tax-exempt entities, insurance companies, regulated investment companies, real estate investment trusts, trusts and estates, dealers in securities or currencies, traders in securities

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that have elected to use the mark-to-market method of accounting for their securities, persons holding the notes as part of an integrated investment, including a “straddle,” “hedge,” “constructive sale” or “conversion transaction,” persons whose functional currency for tax purposes is not the U.S. dollar and persons subject to the alternative minimum tax provisions of the Code.

This summary does not include any description of the tax laws of any state or local governments, or of any foreign government, that may be applicable to a particular holder. This summary also may not apply to all forms of notes. If the tax consequences associated with a particular form of note are different than those described in this section, they will be described in the applicable supplement.

This summary is directed solely to holders that, except as otherwise specifically noted, will purchase the notes offered in this prospectus upon original issuance at the issue price (as defined below) and will hold such notes as capital assets within the meaning of Section 1221 of the Code, which generally means as property held for investment.

*You should consult your own tax advisor concerning the U.S. federal income and estate tax consequences to you of acquiring, owning and disposing of the notes, as well as any tax consequences arising under the laws of any state, local, foreign, or other tax jurisdiction and the possible effects of changes in U.S. federal or other tax laws.*

As used in this prospectus, the term “U.S. Holder” means a beneficial owner of a note that is for U.S. federal income tax purposes:

- a citizen or resident of the United States;
- a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of any state of the United States or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

- any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust.

Notwithstanding the preceding paragraph, to the extent provided in Treasury regulations, some trusts in existence on August 20, 1996, and treated as United States persons prior to that date, that elect to continue to be treated as United States persons also will be U.S. Holders.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds the notes, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership and accordingly, this summary does not apply to partnerships. A partner of a partnership holding the notes should consult its own tax advisor regarding the U.S. federal income tax consequences to the partner of the acquisition, ownership and disposition by the partnership of the notes.

*Payment of Interest.* Except as described below in the case of interest on a note issued with original issue discount, as defined below under “— Original Issue Discount,” interest on a note generally will be included in the income of a U.S. Holder as interest income at the time it is accrued or is received in accordance with the U.S. Holder’s regular method of accounting for U.S. federal income tax purposes and will be ordinary income.

*Original Issue Discount.* Some of our notes may be issued with original issue discount (“OID”). U.S. Holders of notes issued with OID, other than short-term notes with a maturity of one year or less from the date of issue, will be subject to special tax accounting rules, as described in greater detail below. For tax purposes, OID is the excess of the “stated redemption price at maturity” of a note over its “issue price.” The “stated redemption price at maturity” of a note is the sum of all payments required to be made on the note other than “qualified stated interest” payments, as defined below.



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The “issue price” of a note is generally the first offering price to the public at which a substantial amount of the issue was sold (ignoring sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The term “qualified stated interest” generally means stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer), or that is treated as constructively received, at least annually at a single fixed rate or, under certain circumstances, at a variable rate. If a note bears interest during any accrual period at a rate below the rate applicable for the remaining term of the note (for example, notes with teaser rates or interest holidays), then some or all of the stated interest may not be treated as qualified stated interest.

A U.S. Holder of a note with a maturity of more than one year from its date of issue that has been issued with OID (an “OID note”) is generally required to include any qualified stated interest payments in income as interest at the time it is accrued or is received in accordance with the U.S. Holder’s regular accounting method for tax purposes, as described above under “— Payment of Interest.” A U.S. Holder of an OID note is generally required to include in income the sum of the daily accruals of the OID for the note for each day during the taxable year (or portion of the taxable year) in which the U.S. Holder held the OID note, regardless of such holder’s regular method of accounting. Accordingly, a U.S. Holder may be required to include OID in income in advance of the receipt of some or all of the related cash payments. The daily portion is determined by allocating the OID for each day of the accrual period. An accrual period may be of any length and the accrual periods may even vary in length over the term of the OID note, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs either on the first day of an accrual period or on the final day of an accrual period. The amount of OID allocable to an accrual period is equal to the excess of: (1) the product of the “adjusted issue price” of the OID note at the beginning of the accrual

period and its yield to maturity (computed generally on a constant yield method and compounded at the end of each accrual period, taking into account the length of the particular accrual period) over (2) the amount of any qualified stated interest allocable to the accrual period. OID allocable to a final accrual period is the difference between the amount payable at maturity, other than a payment of qualified stated interest, and the adjusted issue price at the beginning of the final accrual period. Special rules will apply for calculating OID for an initial short accrual period. The “adjusted issue price” of an OID note at the beginning of any accrual period is the sum of the issue price of the OID note plus the amount of OID allocable to all prior accrual periods reduced by any payments received on the OID note that were not qualified stated interest. Under these rules, a U.S. Holder generally will have to include in income increasingly greater amounts of OID in successive accrual periods.

If the excess of the “stated redemption price at maturity” of a note over its “issue price” is less than 1/4 of 1% of the note’s stated redemption price at maturity multiplied by the number of complete years from its issue date to its maturity, or weighted average maturity in the case of notes with more than one principal payment (“*de minimis* OID”), the note is not treated as issued with OID. A U.S. Holder generally must include the *de minimis* OID in income at the time payments, other than qualified stated interest, on the notes are made in proportion to the amount paid (unless the U.S. Holder makes the election described below under “— Election to Treat All Interest as Original Issue Discount”). Any amount of *de minimis* OID that is included in income in this manner will be treated as capital gain.

*Variable Rate Notes.* In the case of a note that is a variable rate note, special rules apply. A note will qualify as a “variable rate debt instrument” under U.S. Treasury regulations if (i) the note’s issue price does not exceed the total noncontingent principal payments by more than the lesser of: (a) 0.015 multiplied by the

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product of the total noncontingent principal payments and the number of complete years to maturity from the issue date, or (b) 15% of the total noncontingent principal payments; and (ii) the note provides for stated interest, compounded or paid at least annually, only at one or more qualified floating rates, a single fixed rate and one or more qualified floating rates, a single objective rate, or a single fixed rate and a single objective rate that is a qualified inverse floating rate.

Generally, a rate is a qualified floating rate if: (i) (a) variations in the value of the rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the note is denominated; or (b) the rate is equal to such a rate multiplied by either a fixed multiple that is greater than 0.65 but not more than 1.35 or a fixed multiple greater than 0.65 but not more than 1.35, increased or decreased by a fixed rate, and (ii) the value of the rate on any date during the term of the note is set no earlier than three months prior to the first day on which that value is in effect and no later than one year following that first day. If a note provides for two or more qualified floating rates that are within 0.25 percentage points of each other on the issue date or can reasonably be expected to have approximately the same values throughout the term of the note, the qualified floating rates together constitute a single qualified floating rate. A note will not have a variable rate that is a qualified floating rate, however, if the variable rate of interest is subject to one or more minimum or maximum rate floors or ceilings or one or more governors limiting the amount of increase or decrease unless such floor, ceiling, or governor is fixed throughout the term of the note or is not reasonably expected as of the issue date to significantly affect the yield on the note.

Generally, an objective rate is a rate that is (i) not a qualified floating rate, (ii) is determined using a single fixed formula that is based on objective financial or economic information that is not within the control of the issuer or a related party, and (iii) the value of the rate on any date during the term of the note is set no earlier

than three months prior to the first day on which that value is in effect and no later than one year following that first day. If it is reasonably expected that the average value of the variable rate during the first half of the term of a note will be either significantly less than or significantly greater than the average value of the rate during the final half of the term of the note, then the note will not have a variable rate that is an objective rate. An objective rate is a qualified inverse floating rate if that rate is equal to a fixed rate minus a qualified floating rate and variations in the rate can reasonably be expected to inversely reflect contemporaneous variations in the qualified floating rate.

A note will also have a variable rate that is a single qualified floating rate or an objective rate if interest on the note is stated at a fixed rate for an initial period of one year or less followed by either a qualified floating rate or an objective rate for a subsequent period, and either: (i) the fixed rate and the qualified floating rate or objective rate have values on the issue date of the note that do not differ by more than 0.25 percentage points, or (ii) the value of the qualified floating rate or objective rate is intended to approximate the fixed rate.

In the case of a note that provides for stated interest that is unconditionally payable at least annually at a variable rate that is a single qualified floating rate or objective rate, or one of those rates after a single fixed rate for an initial period, all stated interest on the note is treated as qualified stated interest. In that case, both the note's yield to maturity and qualified stated interest will be determined, solely for purposes of calculating the accrual of OID, if any, as though the note will bear interest in all periods throughout its term (in the case of a single qualified floating rate or qualified inverse floating rate) at a fixed rate generally equal to the rate that would be applicable to interest payments on the note on its date of issue or, in the case of an objective rate (other than a qualified inverse floating rate), the rate that reflects the yield to maturity that is reasonably expected for the note (the "fixed rate substitute"). A U.S. holder should then recognize OID, if any, that is calculated

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based on the note's assumed yield to maturity. If the interest actually accrued or paid during an accrual period exceeds or is less than the assumed fixed interest, the qualified stated interest allocable to that period is increased or decreased, as applicable.

If a note does not provide for stated interest at a single qualified floating rate or a single objective rate, and also does not provide for interest payable at a fixed rate other than a single fixed rate for an initial period, the interest and OID accruals on the note must be determined by (i) determining a fixed rate substitute for each variable rate provided under the note (as described above), (ii) constructing the equivalent fixed rate debt instrument, using the fixed rate substitutes, (iii) determining the amount of qualified stated interest and OID with respect to the equivalent fixed rate debt instrument, and (iv) making appropriate adjustments to qualified stated interest or OID for actual variable rates during the applicable accrual period.

In the case of a note that provides for stated interest either at one or more qualified floating rates or at a qualified inverse floating rate and also provides for stated interest at a single fixed rate other than at a single fixed rate for an initial period (as described above), the interest and OID accruals on the note must be determined by using the method described above. However, the note will be treated, for purposes of the first three steps of the determination, as if the note had provided for a qualified floating rate, or a qualified inverse floating rate, rather than the fixed rate. The qualified floating rate, or qualified inverse floating rate, that replaces the fixed rate must be such that the fair market value of the note as of the issue date approximates the fair market value of an otherwise identical debt instrument that provides for the qualified floating rate, or qualified inverse floating rate, rather than the fixed rate.

*Acquisition Premium.* If a U.S. Holder purchases an OID note for an amount greater than its adjusted issue price (as determined above) at the purchase date and less than or equal to the sum of all amounts, other than

qualified stated interest, payable on the OID note after the purchase date, the excess is "acquisition premium." Under these rules, in general, the amount of OID which must be included in income for the note for any taxable year (or any portion of a taxable year in which the note is held) will be reduced (but not below zero) by the portion of the acquisition premium allocated to the period. The amount of acquisition premium allocated to each period is determined by multiplying the OID that otherwise would have been included in income by a fraction, the numerator of which is the excess of the cost over the adjusted issue price of the OID note and the denominator of which is the excess of the OID note's stated redemption price at maturity over its adjusted issue price.

If a U.S. Holder purchases an OID note for an amount less than its adjusted issue price (as determined above) at the purchase date, any OID accruing with respect to that OID note will be required to be included in income and, to the extent of the difference between the purchase amount and the OID note's adjusted issue price, the OID note will be treated as having "market discount." See "— Market Discount" below.

*Amortizable Bond Premium.* If a U.S. Holder purchases a note (including an OID note) for an amount in excess of the sum of all amounts payable on the note after the purchase date, other than qualified stated interest, such holder will be considered to have purchased such note with "amortizable bond premium" equal in amount to such excess. A U.S. Holder may elect to amortize such premium as an offset to interest income using a constant yield method over the remaining term of the note based on the U.S. Holder's yield to maturity with respect to the note.

A U.S. Holder generally may use the amortizable bond premium allocable to an accrual period to offset interest required to be included in the U.S. Holder's income under its regular method of accounting with respect to the note in that accrual period. If the amortizable bond premium allocable to an accrual period exceeds the amount of interest allocable to such accrual

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period, such excess would be allowed as a deduction for such accrual period, but only to the extent of the U.S. Holder's prior interest inclusions on the note that have not been offset previously by bond premium. Any excess is generally carried forward and allocable to the next accrual period.

If a note may be redeemed by us prior to its maturity date, the amount of amortizable bond premium will be based on the amount payable at the applicable redemption date, but only if use of the redemption date (in lieu of the stated maturity date) results in a smaller amortizable bond premium for the period ending on the redemption date. In addition, special rules limit the amortization of bond premium in the case of convertible notes.

An election to amortize bond premium applies to all taxable debt obligations held by the U.S. Holder at the beginning of the first taxable year to which the election applies and thereafter acquired by the U.S. Holder and may be revoked only with the consent of the IRS. Generally, a U.S. Holder may make an election to include in income its entire return on a note (*i.e.*, the excess of all remaining payments to be received on the note over the amount paid for the note by such U.S. Holder) in accordance with a constant yield method based on the compounding of interest, as discussed below under “— Election to Treat All Interest as Original Issue Discount.” If a U.S. Holder makes such an election for a note with amortizable bond premium, such election will result in a deemed election to amortize bond premium for all of the U.S. Holder's debt instruments with amortizable bond premium and may be revoked only with the permission of the IRS.

A U.S. Holder that elects to amortize bond premium will be required to reduce its tax basis in the note by the amount of the premium amortized during its holding period. OID notes purchased at a premium will not be subject to the OID rules described above.

If a U.S. Holder does not elect to amortize bond premium, the amount of bond premium will be included in its tax basis in the note. Therefore, if a U.S. Holder

does not elect to amortize bond premium and it holds the note to maturity, the premium generally will be treated as capital loss when the note matures.

*Market Discount.* If a U.S. Holder purchases a note for an amount that is less than its stated redemption price at maturity, or, in the case of an OID note, its adjusted issue price, that holder will be considered to have purchased the note with “market discount.” Any payment, other than qualified stated interest, or any gain on the sale, exchange, retirement or other disposition of a note with market discount generally will be treated as ordinary interest income to the extent of the market discount not previously included in income that accrued on the note during such holder's holding period. In general, market discount is treated as accruing on a straight-line basis over the term of the note unless an election is made to accrue the market discount under a constant yield method. In addition, a U.S. Holder may be required to defer, until the maturity of the note or its earlier disposition in a taxable transaction, the deduction of a portion of the interest paid on any indebtedness incurred or maintained to purchase or carry the note in an amount not exceeding the accrued market discount on the note.

A U.S. Holder may elect to include market discount in income currently as it accrues (on either a straight-line or constant yield basis), in lieu of treating a portion of any gain realized on a sale, exchange, retirement or other disposition of the note as ordinary income. If an election is made to include market discount on a current basis, the interest deduction deferral rule described above will not apply. If a U.S. Holder makes such an election, it will apply to all market discount debt instruments acquired by such holder on or after the first day of the first taxable year to which the election applies. The election may not be revoked without the consent of the IRS. U.S. Holders should consult with their own tax advisors before making this election.

If the difference between the stated redemption price at maturity of a note or, in the case of an OID note, its adjusted issue price, and the amount paid for the note is

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less than 1/4 of 1% of the note's stated redemption price at maturity or, in the case of an OID note, its adjusted issue price, multiplied by the number of remaining complete years to the note's maturity ("*de minimis* market discount"), the note is not treated as issued with market discount.

Generally, a U.S. Holder may make an election to include in income its entire return on a note (i.e., the excess of all remaining payments to be received on the note over the amount paid for the note by that U.S. Holder) in accordance with a constant yield method based on the compounding of interest, as discussed below under "— Election to Treat All Interest as Original Issue Discount." If a U.S. Holder makes such an election for a note with market discount, the U.S. Holder will be required to include market discount in income currently as it accrues on a constant yield basis for all market discount debt instruments acquired by such U.S. Holder on or after the first day of the first taxable year to which the election applies, and such election may be revoked only with the permission of the IRS.

*Election to Treat All Interest as Original Issue Discount.* A U.S. Holder may elect to include in income all interest that accrues on a note using the constant-yield method applicable to OID described above, subject to certain limitations and exceptions. For purposes of this election, interest includes stated interest, acquisition discount, OID, *de minimis* OID, market discount, *de minimis* market discount and unstated interest, as adjusted by any amortizable bond premium or acquisition premium, each as described herein. If this election is made for a note, then, to apply the constant-yield method: (i) the issue price of the note will equal its cost, (ii) the issue date of the note will be the date it was acquired and (iii) no payments on the note will be treated as payments of qualified stated interest. A U.S. Holder must make this election for the taxable year in which the note was acquired, and may not revoke the election without the consent of the IRS. U.S. Holders should consult with their own tax advisors before making this election.

*Notes That Trade "Flat."* We expect that some notes will trade in the secondary market with accrued interest. However, we may issue notes with terms and conditions that would make it likely that such notes would trade "flat" in the secondary market, which means that upon a sale of a note a U.S. Holder would not be paid an amount that reflects the accrued but unpaid interest with respect to such note. Nevertheless, for U.S. federal income tax purposes, a portion of the sales proceeds equal to the interest accrued with respect to such note from the last interest payment date to the sale date must be treated as interest income rather than as an amount realized upon the sale. Accordingly, a U.S. Holder that sells such a note between interest payment dates would be required to recognize interest income and, in certain circumstances, would recognize a capital loss (the deductibility of which is subject to limitations) on the sale of the note. Concurrently, a U.S. Holder that purchases such a note between interest payment dates would not be required to include in income that portion of any interest payment received that is attributable to interest that accrued prior to the purchase. Such payment is treated as a return of capital which reduces the U.S. Holder's remaining cost basis in the note. However, interest that accrues after the purchase date is included in income in the year received or accrued (depending on the U.S. Holder's accounting method). U.S. Holders that purchase such notes between interest payment dates should consult their own tax advisors concerning such holder's adjusted tax basis in the note and whether such notes should be treated as having been purchased with market discount, as described above.

*Short-Term Notes.* Some of our notes may be issued with maturities of one year or less from the date of issue, which we refer to as short-term notes. Treasury regulations provide that no payments of interest on a short-term note are treated as qualified stated interest. Accordingly, in determining the amount of discount on a short-term note, all interest payments, including stated interest, are included in the short-term note's stated redemption price at maturity.

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In general, individual and certain other U.S. Holders using the cash basis method of tax accounting are not required to include accrued discount on short-term notes in income currently unless they elect to do so, but they may be required to include any stated interest in income as the interest is received. However, a cash basis U.S. Holder will be required to treat any gain realized on a sale, exchange or retirement of the short-term note as ordinary income to the extent such gain does not exceed the discount accrued with respect to the short-term note, which will be determined on a straight-line basis unless the holder makes an election to accrue the discount under the constant-yield method, through the date of sale or retirement. In addition, a cash basis U.S. Holder that does not elect to currently include accrued discount in income will be not allowed to deduct any of the interest paid or accrued on any indebtedness incurred or maintained to purchase or carry a short-term note (in an amount not exceeding the deferred income), but instead will be required to defer deductions for such interest until the deferred income is realized upon the maturity of the short-term note or its earlier disposition in a taxable transaction. However, a cash-basis U.S. Holder of a short-term note may elect to include accrued discount in income on a current basis. If this election is made, the limitation on the deductibility of interest described above will not apply.

A U.S. Holder using the accrual method of tax accounting and some cash basis holders (including banks, securities dealers, regulated investment companies and certain trust funds) generally will be required to include accrued discount on a short-term note in income on a current basis, on either a straight-line basis or, at the election of the holder, under the constant-yield method based on daily compounding.

Regardless of whether a U.S. Holder is a cash-basis or accrual-basis holder, the holder of a short-term note may elect to include accrued "acquisition discount" with respect to the short-term note in income on a current basis. Acquisition discount is the excess of the remaining redemption amount of the short-term note at the time

of acquisition over the purchase price. Acquisition discount will be treated as accruing on a straight-line basis or, at the election of the holder, under a constant yield method based on daily compounding. If a U.S. Holder elects to include accrued acquisition discount in income, the rules for including OID will not apply. In addition, the market discount rules described above will not apply to short-term notes.

*Sale, Exchange or Retirement of Notes.* Upon the sale, exchange, retirement or other disposition of a note, a U.S. Holder will recognize gain or loss equal to the difference between the amount realized upon the sale, exchange, retirement or other disposition (less an amount equal to any accrued interest not previously included in income if the note is disposed of between interest payment dates, which will be included in income as interest income for U.S. federal income tax purposes) and the U.S. Holder's adjusted tax basis in the note. The amount realized by the U.S. Holder will include the amount of any cash and the fair market value of any other property received for the note. A U.S. Holder's adjusted tax basis in a note generally will be the cost of the note to such U.S. Holder, increased by any OID, market discount, *de minimis* OID, *de minimis* market discount or any discount with respect to a short-term note previously included in income with respect to the note, and decreased by the amount of any premium previously amortized to reduce interest on the note and the amount of any payment (other than a payment of qualified stated interest) received in respect of the note.

Except as discussed above with respect to market discount, gain or loss realized on the sale, exchange, retirement or other disposition of a note generally will be capital gain or loss and will be long-term capital gain or loss if the note has been held for more than one year. Net long-term capital gain recognized by an individual U.S. Holder is generally taxed at preferential rates. The ability of U.S. Holders to deduct capital losses is subject to limitations under the Code.

*Indexed Notes and Notes Subject to Contingencies Including Optional Redemption.* The notes may pro-

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vide for payments which are determined or partially determined by reference to the price, performance or levels of one or more securities, currencies or composite currencies, commodities, interest rates, inflation rates, stock or other indices or other formulae, financial or market measures or reference assets. Also, the notes may provide for an alternative payment schedule or schedules applicable upon the occurrence of a contingency or contingencies, other than a remote or incidental contingency, whether that contingency relates to payments of interest or of principal. In addition, the notes may contain provisions permitting them to be redeemed prior to their stated maturity at our option and/or at the option of the holder. Notes containing these features may be subject to rules that differ from the general rules discussed herein.

U.S. Holders considering the purchase of indexed notes and notes with the other features described above should carefully examine the applicable supplement and should consult their own tax advisors regarding the U.S. federal income tax consequences to a U.S. Holder of the ownership and disposition of those notes since the U.S. federal income tax consequences depend on the particular terms and features of the notes.

### *Additional Medicare Tax on Unearned Income*

Certain U.S. Holders, including individuals, estates and trusts, will be subject to an additional 3.8% Medicare tax on unearned income. For individual U.S. Holders, the additional Medicare tax applies to the lesser of (i) "net investment income" or (ii) the excess of "modified adjusted gross income" over \$200,000 (\$250,000 if married and filing jointly or \$125,000 if married and filing separately). "Net investment income" generally equals the taxpayer's gross investment income reduced by the deductions that are allocable to such income. Investment income generally includes passive income such as interest, dividends, annuities, royalties, rents, and capital gains. U.S. Holders are urged to consult their own tax advisors regarding the implications of the additional Medicare tax resulting from an investment in the notes.

### *Backup Withholding and Information Reporting*

In general, other than in the case of certain exempt holders, we and other payors are required to report to the IRS all payments of principal, any premium and interest on a note, and the accrual of OID on an OID note. In addition, we and other payors generally are required to report to the IRS any payment of proceeds of the sale of a note before maturity. Additionally, backup withholding generally will apply to any payments, including payments of OID, if a U.S. Holder fails to provide an accurate taxpayer identification number and certify that the taxpayer identification number is correct, the U.S. Holder is notified by the IRS that it has failed to report all interest and dividends required to be shown on its U.S. federal income tax returns or a U.S. Holder does not certify that it has not underreported its interest and dividend income. If applicable, backup withholding will be imposed at a rate of 28%.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a holder's U.S. federal income tax liability provided the required information is furnished to the IRS.

### *Foreign Account Tax Compliance Act*

The Foreign Account Tax Compliance Act ("FATCA") (sections 1471 through 1474 of the Code) imposes a 30% U.S. withholding tax on certain U.S. source payments, including interest (and OID), dividends, other fixed or determinable annual or periodical gain, profits, and income, and on the gross proceeds from a disposition of property of a type which can produce U.S. source interest or dividends ("Withholdable Payments"), if paid to a foreign financial institution (including amounts paid to a foreign financial institution on behalf of a holder), unless such institution enters into an agreement with the Treasury to collect and provide to the Treasury certain information regarding U.S. financial account holders, including certain account holders that are foreign entities with U.S. owners, with such institution or otherwise complies with FATCA. FATCA also generally imposes a withholding tax of 30% on

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Withholdable Payments made to a non-financial foreign entity unless such entity provides the withholding agent with a certification that it does not have any substantial U.S. owners or a certification identifying the direct and indirect substantial U.S. owners of the entity. Under certain circumstances, a holder may be eligible for refunds or credits of such taxes.

These withholding and reporting requirements generally apply to U.S. source periodic payments made after June 30, 2014 and to payments of gross proceeds from a sale or redemption made after December 31, 2016. If we (or an applicable withholding agent) determine withholding under FATCA is appropriate with respect to the notes, we (or such agent) will withhold tax at the applicable statutory rate, without being required to pay any additional amounts in respect of such withholding. Foreign financial institutions and non-financial foreign entities located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Holders are urged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in the notes.

### **ERISA CONSIDERATIONS**

*ERISA Fiduciary Considerations.* A fiduciary of a pension plan or other employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), should consider fiduciary standards under ERISA in the context of the particular circumstances of that plan before authorizing an investment in the notes. Among other factors, the fiduciary should consider whether an investment in the notes is authorized by, and in accordance with, the documents and instruments governing the plan and whether the investment is appropriate for the plan in view of its overall investment policy and diversification of its portfolio. A fiduciary should also consider whether an investment in the notes may constitute a “prohibited transaction,” as described below.

*Prohibited Transaction Avoidance.* ERISA and the Code prohibit certain transactions (referred to as “prohibited transactions”) involving the assets of a plan subject to Title I of ERISA or the assets of an individual retirement account or other plan subject to Section 4975 of the Code (including any underlying assets of an entity which are “plan assets” because of benefit plan investors’ investments in the entity) (collectively referred to as “ERISA plans”), on the one hand, and persons who have certain specified relationships to the plan (“parties in interest” within the meaning of ERISA or “disqualified persons” within the meaning of the Code), on the other. Governmental plans (as defined in Section 3(32) of ERISA) and other types of plans which are not subject to the prohibited transaction requirements of ERISA or Section 4975 of the Code (“non-ERISA arrangements”) may be subject to similar provisions under applicable federal, state, local, foreign or other regulations, rules, or laws (“similar laws”).

We and our affiliates provide services to many ERISA plans and non-ERISA arrangements. If we are considered, or one of our affiliates is considered, to be a party in interest or disqualified person with respect to an ERISA plan, or to have a similar relationship with respect to a non-ERISA arrangement for purposes of similar laws, then the investment in notes by the ERISA plan or non-ERISA arrangement may give rise to a prohibited transaction. A violation of the prohibited transaction rules may result in civil penalties or other liabilities under ERISA and excise taxes under Section 4975 of the Code for any disqualified persons or parties in interest participating in the transaction, and penalties or liabilities under similar laws, unless an applicable statutory, regulatory or administrative exemption is available.

Accordingly, unless otherwise provided in the applicable supplement for a particular note offering, the notes may not be purchased, held or disposed of by any ERISA plan, non-ERISA arrangement or any person investing “plan assets” of any such plans, unless the purchase, holding or disposition is eligible for exemp-



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tive relief or that purchase, holding or disposition is not otherwise prohibited. Therefore, any purchaser (other than an individual purchasing for his or her own account), including any fiduciary purchasing on behalf of an ERISA plan or non-ERISA arrangement, transferee or holder of the notes will be deemed to have represented and warranted to us, in its corporate and its fiduciary capacity, by its purchase and holding, on each day from the date of its purchase of the notes, and including, the date of disposition of the notes, that either:

- (a) it is not an ERISA plan or non-ERISA arrangement and is not purchasing the notes on behalf of or with “plan assets” of any such plan or arrangement; or
- (b) its purchase, holding and disposition are eligible for exemptive relief or the purchase, holding or disposition are not prohibited by ERISA or Section 4975 of the Code (or, in the case of a non-ERISA arrangement, any similar laws).

Moreover, any purchaser that is a plan or is acquiring the notes on behalf of a plan, including any fiduciary purchasing on behalf of a plan, will be deemed to have represented, in its corporate and its fiduciary capacity, by its purchase and holding of the notes that:

- (a) neither we, the underwriter nor any of our respective affiliates (collectively, the “Seller”) is a “fiduciary” (under Section 3(21) of ERISA, or under any final or proposed regulations thereunder, or with respect to a governmental, church, or foreign plan under any similar laws) with respect to the acquisition, holding or disposition of the notes, or as a result of any exercise by the Seller of any rights in connection with the notes;
- (b) no advice provided by the Seller has formed a primary basis for any investment decision by or on behalf of such purchaser in connection with the notes and the transactions contemplated with respect to the notes; and

- (c) such purchaser recognizes and agrees that any communication from the Seller to the purchaser with respect to the notes is not intended by the Seller to be impartial investment advice and is rendered in its capacity as a seller of such notes and not a fiduciary to such purchaser.

*Limitation on Investment by Benefit Plan Investors.* In addition, certain regulatory requirements applicable under ERISA could cause investments in the notes by a plan (whether directly or indirectly) to be deemed to include not only the purchased notes but also an undivided interest in certain of the underlying assets of the relevant issuer. In the absence of an applicable exception to this general rule, the relevant issuer could be considered to hold a portion of the assets of the investing plan such that persons providing services in connection with such assets might be considered “parties in interest” or “disqualified persons” with respect to the investing plan. Moreover, any person exercising control or authority over such assets would be a fiduciary of such plan and therefore subject to the fiduciary responsibility provisions of Title I of ERISA and the prohibited transaction provisions referenced above. Additionally, transactions involving those assets undertaken by such service providers or fiduciaries could be deemed prohibited transactions under ERISA or the Code. Whether the underlying assets of an issuer of any note would be considered to be the assets of any employee benefit plan investor will depend on the specific terms of such note, and a plan investor should look to the prospectus supplement for that particular note in order to make that determination.

*This discussion is a general summary of some of the rules which apply to ERISA plans and non-ERISA arrangements and their related investment vehicles as of the date of this prospectus. The rules governing investments by ERISA plans and non-ERISA arrangements change frequently, and we have no duty to, nor will we, inform you about any changes to such rules if and when they occur. This summary does not describe all of the*

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*rules or other considerations that may be relevant to the investment in the notes by such plans or arrangements. The description above is not, and should not be construed as, legal advice or a legal opinion.*

*Due to the complexity of these rules and the penalties imposed upon persons involved in prohibited transactions, it is important that any person considering the purchase of the notes with plan assets consult with its counsel regarding the consequences under ERISA and the Code, or other similar law, of the acquisition and ownership of the notes and the availability of exemptive relief. The sale of the notes to a plan is in no respect a representation by Bank of America or the underwriters that such an investment meets all relevant legal requirements with respect to investments by plans generally or any particular plan, or that such an investment is appropriate for plans generally or any particular plan.*

### **PLAN OF DISTRIBUTION AND CONFLICTS OF INTEREST**

Under the terms of an Amended and Restated Selling Agent Agreement dated as of July 16, 2014, the notes are offered from time to time by us to the Purchasing Agent for subsequent resale to the agents and other dealers. The agents, including the Purchasing Agent, are parties to that agreement. The notes will be offered for sale in the United States only. Dealers who are members of the selling group have executed a Master Selected Dealer Agreement with the Purchasing Agent. The agents are not required to sell any specific amount of notes but have agreed to use their reasonable best efforts to solicit offers from investors to purchase the notes. We also may appoint additional agents to solicit offers to purchase the notes. Any solicitation and sale of the notes through those additional agents, however, will be on the same terms and conditions to which the original agents have agreed.

We will pay the Purchasing Agent a gross selling concession to be divided among the Purchasing Agent and the other agents as they agree. The concession is

payable to the Purchasing Agent in the form of a discount ranging from 0.30% to 3.15% of the non-discounted price for each note sold. However, we also may pay the Purchasing Agent a concession greater than or less than the range specified above. The gross selling concession that we will pay to the Purchasing Agent will be set forth in the applicable supplement. The Purchasing Agent also may sell notes to dealers at a discount not in excess of the concession it received from us. In certain cases, the Purchasing Agent and the other agents and dealers may agree that the Purchasing Agent will retain the entire gross selling concession. It is anticipated that in these circumstances the other agents and dealers will be compensated by their clients based on a percentage of assets under management. We will disclose any of these arrangements in the applicable supplement.

Following the solicitation of orders, each of the agents, severally and not jointly, may purchase notes as principal for its own account from the Purchasing Agent. Unless otherwise set forth in the applicable supplement, these notes will be purchased by the agents and resold by them to one or more investors at a fixed public offering price. After the initial public offering of notes to be resold by an agent to investors, the public offering price (in the case of notes to be resold at a fixed public offering price), concession and discount may be changed.

We have the sole right to accept offers to purchase notes and may reject any proposed offer to purchase notes in whole or in part. Each agent also has the right, in its discretion reasonably exercised, to reject any proposed offer to purchase notes in whole or in part. We reserve the right to withdraw, cancel or modify any offer without notice. We also may change the terms, including the interest rate we will pay on the notes, at any time prior to our acceptance of an offer to purchase.

Each agent, including the Purchasing Agent, may be deemed to be an “underwriter” within the meaning of the Securities Act of 1933. We have agreed to indemnify the agents against certain liabilities, including

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liabilities under the Securities Act of 1933, or to contribute to payments the agents may be required to make with respect to those liabilities. We also have agreed to reimburse the agents for certain expenses.

If any notes are to be distributed by means other than those set forth in the Amended and Restated Selling Agent Agreement, prior to commencement of that distribution, copies of the proposed distribution agreements will be submitted to FINRA for review along with an estimate of the maximum compensation to be received by any FINRA member or related person participating in the distribution.

If we decide to list any note on a stock exchange, we will specify the exchange in the supplement relating to those notes. No note will have an established trading market when issued. However, we have been advised by the agents that they may purchase and sell notes in the secondary market as permitted by applicable laws and regulations. The agents are not obligated to make a market in the notes, and they may discontinue making a market in the notes at any time without notice. Neither we nor the agents can provide any assurance regarding the development, liquidity or maintenance of any trading market for any notes. All secondary trading in the notes will settle in immediately available funds. See the section entitled "Registration and Settlement" beginning on page 27.

In connection with certain offerings of notes, the rules of the SEC permit the Purchasing Agent to engage in transactions that may stabilize the price of the notes. The Purchasing Agent will conduct these activities for the agents. These transactions may consist of short sales, stabilizing transactions and purchases to cover positions created by short sales. A short sale is the sale by the Purchasing Agent of a greater amount of notes than the amount the Purchasing Agent has agreed to purchase in connection with a specific offering of notes. Stabilizing transactions consist of certain bids or purchases made by the Purchasing Agent to prevent or retard a decline in the price of the notes while an offering of notes is in process. In general, these purchases or bids for the notes

for the purpose of stabilization or to reduce a syndicate short position could cause the price of the notes to be higher than it might otherwise be in the absence of those purchases or bids. Neither we nor the Purchasing Agent makes any representation or prediction as to the direction or magnitude of any effect that these transactions may have on the price of any notes. In addition, neither we nor the Purchasing Agent makes any representation that, once commenced, these transactions will not be discontinued without notice. The Purchasing Agent is not required to engage in these activities and may end any of these activities at any time.

Following the initial distribution of notes, our affiliated entities, including Merrill Lynch, Pierce Fenner & Smith Incorporated, may buy and sell the notes in secondary market transactions as part of their business as broker-dealers. Any sale will be at negotiated prices relating to prevailing prices at the time of sale. This prospectus and any related supplements may be used by one or more of our affiliated entities in connection with offers and sales related to secondary market transactions in the notes to the extent permitted by applicable law. Any of our affiliated entities may act as principal or agent in these transactions. None of Merrill Lynch, Pierce Fenner & Smith Incorporated or any other member of FINRA participating in the distribution of the notes will execute a transaction in our InterNotes® in a discretionary account without specific prior written approval of that customer.

The agents or dealers to or through which we may sell notes may engage in transactions with us and perform services for us in the ordinary course of business.

The maximum underwriting concession or discount to be received by any member of FINRA or independent broker-dealer will not be greater than 8.0% of the initial gross proceeds of the notes sold.

### **Conflicts of Interest**

Merrill Lynch, Pierce Fenner & Smith Incorporated, one of two Joint Lead Managers and a Lead Agent, is a broker-dealer and one of our subsidiaries. Because of

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the relationship between us and Merrill Lynch, Pierce Fenner & Smith Incorporated, each offering and any remarketing of notes will be conducted in compliance with the requirements of FINRA Rule 5121 regarding the offer and sale of securities of an affiliated entity.

In addition, in the ordinary course of their business activities, the agents and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. Certain of the agents or their affiliates that have a lending relationship with us routinely hedge their credit exposure to us consistent with their customary risk management policies. Typically, such agents and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the notes offered by this prospectus and the applicable supplement. Any such short positions could adversely affect future trading prices of the notes offered by this prospectus and the applicable supplement. The agents and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

### **WHERE YOU CAN FIND MORE INFORMATION**

We have filed a registration statement on Form S-3 with the SEC covering the notes to be offered and sold using this prospectus. You should refer to this registration statement and its exhibits for additional information about us. This prospectus summarizes material provisions of contracts and other documents that we refer you to. Because the prospectus may not contain all information that you may find important, you should

review the full text of these documents, which we have included as exhibits to the registration statement.

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document that we file with the SEC at the Public Reference Room of the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You also may inspect our filings over the Internet at the SEC's website, [www.sec.gov](http://www.sec.gov). The reports and other information we file with the SEC also are available at our website, [www.bankofamerica.com](http://www.bankofamerica.com).

We have included the SEC's web address and our web address as inactive textual references only. Except as specifically incorporated by reference into this prospectus, information on those websites is not part of this prospectus.

You also can inspect reports and other information we file at the offices of The New York Stock Exchange LLC, 20 Broad Street, 17th Floor, New York, New York 10005.

The SEC allows us to incorporate by reference the information we file with it. This means that:

- incorporated documents are considered part of this prospectus;
- we can disclose important information to you by referring you to those documents; and
- information that we file with the SEC automatically will update and supersede this incorporated information and information in this prospectus.

We incorporate by reference the documents listed below which were filed with the SEC under the Securities Exchange Act of 1934:

- our annual report on Form 10-K for the year ended December 31, 2013;
- our quarterly reports on Form 10-Q for the periods ended March 31, 2014, June 30, 2014 and September 30, 2014; and

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- our current reports on Form 8-K filed January 15, 2014, March 26, 2014 (two filings), April 16, 2014, April 28, 2014, May 7, 2014, May 27, 2014, June 17, 2014, July 16, 2014 (two filings), August 6, 2014, August 21, 2014, September 5, 2014, September 9, 2014, October 1, 2014, October 15, 2014, October 23, 2014, November 6, 2014, January 15, 2015, and January 27, 2015 (in each case, other than information that is furnished but deemed not to have been filed).

We also incorporate by reference reports that we will file under Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934, on or after the date of this prospectus, but not any information that we may furnish but that is not deemed to be filed.

You should assume that the information appearing in this prospectus is accurate only as of the date of this prospectus. Our business, financial position and results of operations may have changed since that date.

You may request a copy of any filings referred to above, at no cost, by contacting us at the following address or telephone number:

Bank of America Corporation  
Fixed Income Investor Relations  
100 North Tryon Street  
Charlotte, North Carolina 28255-0065  
1-866-607-1234

### **FORWARD-LOOKING STATEMENTS**

We have included or incorporated by reference in this prospectus statements that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. You may find these statements by looking for words such as “plan,” “believe,” “expect,” “intend,” “anticipate,” “estimate,” “project,” “potential,” “possible,” or other similar expressions, or future or conditional verbs such as “will,” “should,” “would,” and “could.”

All forward-looking statements, by their nature, are subject to risks and uncertainties. Our actual results may differ materially from those set forth in our forward-looking statements. As a large, international financial services company, we face risks that are inherent in the businesses and market places in which we operate. Information regarding important factors that could cause our future financial performance to vary from that described in our forward-looking statements is contained in our annual report on Form 10-K for the year ended December 31, 2013, which is incorporated in this prospectus by reference, under the captions “Item 1A. Risk Factors,” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as well as those discussed in our subsequent filings that are incorporated in this prospectus by reference. See “Where You Can Find More Information” above for information about how to obtain a copy of our annual report.

You should not place undue reliance on any forward-looking statements, which speak only as of the dates they are made.

All subsequent written and oral forward-looking statements attributable to us or any person on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events.

### **LEGAL MATTERS**

The legality of the notes will be passed upon for us by McGuireWoods LLP, Charlotte, North Carolina, and for the agents by Morrison & Foerster LLP, New York, New York. Certain U.S. federal income tax matters will be passed upon for us by Morrison & Foerster LLP, New York, New York, special tax counsel to Bank of America Corporation. McGuireWoods LLP regularly performs legal services for us. Some members of

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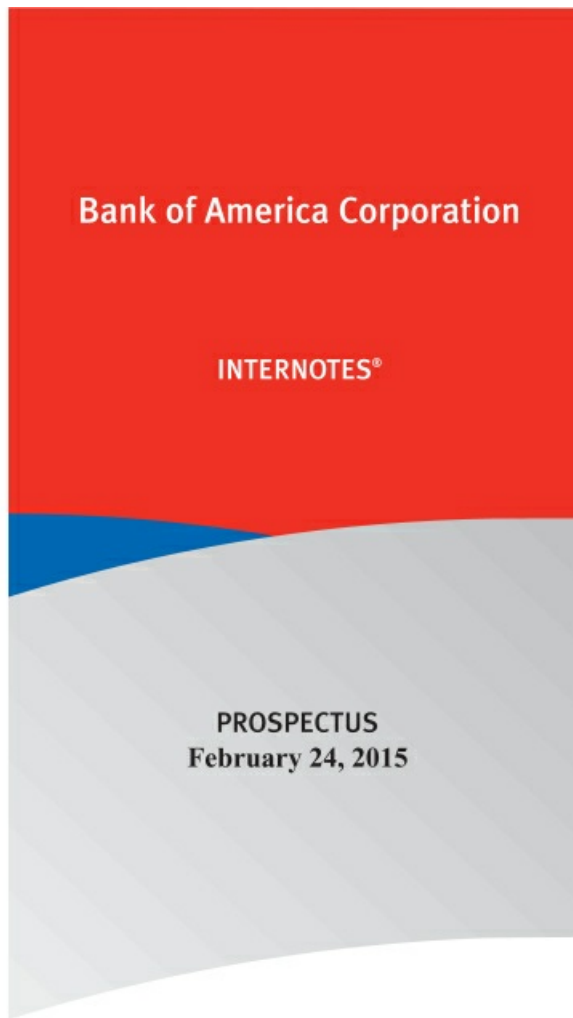
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McGuireWoods LLP performing those legal services own shares of our common stock.

**EXPERTS**

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in the

Report of Management on Internal Control Over Financial Reporting) incorporated in this prospectus by reference to our annual report on Form 10-K for the year ended December 31, 2013 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.



Our affiliated entities, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, will deliver this prospectus for offers and sales in the secondary market.



PROSPECTUS



Bank of America Corporate Center  
100 North Tryon Street  
Charlotte, North Carolina 28255  
(704) 386-5681

**Debt Securities, Preferred Stock, Depositary Shares  
and Junior Subordinated Notes**

BAC Capital Trust VI  
BAC Capital Trust VII  
BAC Capital Trust VIII  
BAC Capital Trust XI  
BAC Capital Trust XIII  
BAC Capital Trust XIV  
BAC Capital Trust XV  
NB Capital Trust III  
Merrill Lynch Capital Trust I  
Merrill Lynch Capital Trust II  
Merrill Lynch Capital Trust III  
Merrill Lynch Preferred Capital Trust III  
Merrill Lynch Preferred Capital Trust IV  
Merrill Lynch Preferred Capital Trust V  
Merrill Lynch Preferred Funding III, L.P.  
Merrill Lynch Preferred Funding IV, L.P.  
Merrill Lynch Preferred Funding V, L.P.

**Trust Securities and Partnership Preferred Securities guaranteed as set forth  
herein by**

**Bank of America Corporation**

Affiliates of Bank of America Corporation, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, may use this prospectus in connection with offers and sales in the secondary market of outstanding debt securities, preferred stock, depositary shares, junior subordinated notes, trust securities, partnership preferred securities or guarantees referenced herein. These affiliates may act as principal or agent in those transactions. Secondary market sales made by them will be made at prices related to market prices at the time of sale.

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*Our securities are unsecured. Our securities are not savings accounts, deposits, or other obligations of a bank, are not guaranteed by Bank of America, N.A. or any other bank, are not insured by the Federal Deposit Insurance Corporation or any other governmental agency, and may involve investment risks.*

*Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.*

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**Prospectus dated February 24, 2015**



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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement filed with the Securities and Exchange Commission, or the SEC, and is intended to describe certain outstanding securities previously issued by us and our predecessor companies and affiliated trusts and partnerships.

This prospectus may be used by our affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, in connection with offers and sales in the secondary market of the securities referenced in this prospectus. Any of our affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, may act as a principal or agent in these transactions. Any affiliate that is a member of the Financial Industry Regulatory Authority, Inc., will conduct these offers and sales in compliance with the requirements of FINRA Rule 5121 regarding the offer and sale of securities of an affiliate. The transactions in the secondary market by our affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, may occur in the open market or may be privately negotiated at prevailing market prices at the time of sale. Our affiliates do not have any obligation to make a market in the securities and may discontinue their market-making activities at any time without notice, in their sole discretion.

We will not receive any proceeds from the sale of securities offered by this prospectus.

In considering an investment in the securities offered by this prospectus, you should rely only on the information included or incorporated by reference in this prospectus or any supplement to this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. The delivery of this prospectus, at any time, does not create any implication that there has been no change in our affairs since the date of this prospectus or that the information in this prospectus is correct as of any time subsequent to the date of this prospectus.

We are offering to sell these securities only in places where sales are permitted. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy these securities in any jurisdiction in which such offer or solicitation is unlawful.

Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to “we,” “us,” “our,” or similar references are to Bank of America Corporation.

**BANK OF AMERICA CORPORATION**

Bank of America 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

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Corporate Center, 100 North Tryon Street, Charlotte, North Carolina 28255 and our telephone number is (704) 386-5681. Through our banking and various nonbank subsidiaries throughout the United States and in international markets, we provide a diversified range of banking and nonbank financial services and products.

**THE TRUSTS**

Each of the trusts listed on the cover page of this prospectus, which we refer to as the Trusts, is a statutory trust organized under Delaware law. Additional information with respect to the Trusts may be found in the prospectuses and supplements thereto with respect to the trust securities issued by the Trusts referred to below and incorporated herein by reference.

**THE LIMITED PARTNERSHIPS**

Each of the limited partnerships listed on the cover page of this prospectus, which we refer to herein as the “Partnerships,” is a limited partnership formed under the Delaware Revised Uniform Limited Partnership Act. Additional information with respect to the Partnerships may be found in the prospectuses and supplements thereto with respect to the partnership preferred securities issued by the Partnerships referred to below and incorporated herein by reference.

**DESCRIPTION OF THE SECURITIES**

The outstanding securities being offered by use of this prospectus consist of debt securities, preferred stock, depositary shares, junior subordinated notes and debt securities, subordinated debentures, trust securities, partnership preferred securities and guarantees previously issued and registered under the following registration statements: 333-180488; 333-175599; 333-158663; 333-155381; 333-152418; 333-133852; 333-130821; 333-123714; 333-112708; 333-104151; 333-97197; 333-97157; 333-83503; 333-65750; 333-51367; 333-47222; 333-18273; 333-15375; 333-13811; 333-07229; 33-63097; 33-57533; 33-49881; 33-30717; 333-132911; 333-122639; 333-109802; 333-105098; 333-59997; 333-42859; 333-44173; and 33-27512. The descriptions of the securities being offered hereby are contained in the prospectuses and supplements thereto that are included in the registration statements referred to above pursuant to which such securities initially were offered. The disclosure information in the prospectuses and all supplements thereto constituting part of the registration statements referred to above is incorporated by reference into this prospectus, except that information contained in such prospectuses and supplements thereto that (1) constitutes a description of Bank of America, or (2) incorporates by reference any information contained in our current or periodic reports filed with the SEC, are superseded by the information in this prospectus. In addition, information contained in any of such prospectuses and supplements thereto that refers to Merrill Lynch & Co., Inc. (“Merrill Lynch”) as the issuer or guarantor of such securities shall be deemed to refer to Bank of America, as successor by merger to Merrill Lynch.

**WHERE YOU CAN FIND MORE INFORMATION**

We, the Trusts and the Partnerships have filed a registration statement on Form S-3 with the SEC covering the securities to be offered and sold using this prospectus. You should refer to this registration statement and its exhibits for additional information about us, the Trusts, the Partnerships and the securities being offered.

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We also file annual, quarterly, and special reports, proxy statements, and other information with the SEC. You may read and copy any document that we file with the SEC at the Public Reference Room of the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You also may inspect our filings over the Internet at the SEC's website, [www.sec.gov](http://www.sec.gov). The reports and other information we file with the SEC also are available at our website, [www.bankofamerica.com](http://www.bankofamerica.com).

We have included the SEC's web address and our web address as inactive textual references only. Except as specifically incorporated by reference into this prospectus, information on those websites is not part of this prospectus.

You also can inspect reports and other information we file at the offices of The New York Stock Exchange LLC, 20 Broad Street, 17th Floor, New York, New York 10005.

The SEC allows us to incorporate by reference the information that we file with it. This means:

- incorporated documents are considered part of this prospectus;
- we can disclose important information to you by referring you to those documents; and
- information that we file with the SEC automatically will update and supersede this incorporated information and information in this prospectus.

We incorporate by reference the documents listed below which were filed with the SEC under the Securities Exchange Act of 1934:

- our annual report on Form 10-K for the year ended December 31, 2013;
- our quarterly reports on Form 10-Q for the quarters ended March 31, 2014, June 30, 2014 and September 30, 2014;
- our current reports on Form 8-K filed January 15, 2014, March 26, 2014 (two filings), April 16, 2014, April 28, 2014, May 7, 2014, May 27, 2014, June 17, 2014, July 16, 2014 (two filings), August 6, 2014, August 21, 2014, September 5, 2014, September 9, 2014, October 1, 2014, October 15, 2014, October 23, 2014, November 6, 2014, January 15, 2015, and January 27, 2015 (in each case, other than information that is furnished but deemed not to have been filed); and
- the descriptions of our series of preferred stock contained in our registration statements filed under Section 12 of the Securities Exchange Act with respect to such series of preferred stock.

We also incorporate by reference (1) reports that we will file under Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, on or after the date of this prospectus, but not any information that we may furnish but that is not deemed to be filed and (2) the disclosure information described above under "Description of the Securities."

You should assume that the information appearing in this prospectus is accurate only as of the date of this prospectus. Our business, financial position, and results of operations may have

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changed since that date. You may request a copy of any filings referred to above, at no cost, by contacting us at the following address or telephone number:

Bank of America Corporation  
Corporate Treasury Division  
100 North Tryon Street  
Charlotte, North Carolina 28255  
(704) 386-5681

There are no separate financial statements of any of the Trusts or the Partnerships in this prospectus. We, the Trusts and the Partnerships do not believe these financial statements would be material to holders of the trust securities or partnership preferred securities because each Trust and Partnership is a special purpose entity that does not have any independent operations other than issuing trust securities, common securities or partnership preferred securities, as applicable; holding our corresponding junior subordinated notes, preferred stock, or partnership preferred securities, as applicable, as assets; and other necessary or incidental activities as described in this prospectus or the original prospectuses and prospectus supplements for the offering of such securities. Furthermore, taken together, our obligations under the applicable securities held as assets of each Trust or Partnership, as applicable, the related declaration of trust or limited partnership agreement, as applicable, and the related guarantees provide, in the aggregate, a full, irrevocable and unconditional guarantee of payments of distributions and other amounts due on the related trust securities of a Trust or partnership preferred securities of a Partnership, as applicable. None of the Trusts or Partnerships are subject to the reporting requirements of the Securities Exchange Act of 1934.

#### **FORWARD-LOOKING STATEMENTS**

We have included or incorporated by reference statements in this prospectus that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. You may find these statements by looking for words such as “plan,” “believe,” “expect,” “intend,” “anticipate,” “estimate,” “project,” “potential,” “possible,” or other similar expressions, or future or conditional verbs such as “will,” “should,” “would,” and “could.”

All forward-looking statements, by their nature, are subject to risks and uncertainties. Our actual results may differ materially from those set forth in our forward-looking statements. As a large, international financial services company, we face risks that are inherent in the businesses and market places in which we operate. Information regarding important factors that could cause our future financial performance to vary from that described in our forward-looking statements is contained in our annual report on Form 10-K for the year ended December 31, 2013, which is incorporated by reference in this prospectus, under the captions “Item 1A. Risk Factors,” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as well as those discussed in our subsequent filings that are incorporated in this prospectus by reference. See “Where You Can Find More Information” above for information about how to obtain a copy of our SEC filings.

You should not place undue reliance on any forward-looking statements, which speak only as of the dates they are made.

All subsequent written and oral forward-looking statements attributable to us or any person on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events.

**LEGAL MATTERS**

The legality of Bank of America's securities being registered have been passed upon for us by McGuireWoods LLP, Charlotte, North Carolina. Certain matters of Delaware law relating to the validity of the trust preferred securities and partnership preferred securities being registered have been passed upon on behalf of the Trusts and the Partnerships by Richards, Layton & Finger, P.A., special Delaware counsel to the Trusts and the Partnerships. McGuireWoods LLP regularly performs legal services for us. Some members of McGuireWoods LLP performing these legal services for us own shares of our common stock.

**EXPERTS**

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this Prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2013 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

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**PART II. INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The estimated expenses, other than underwriting or broker-dealer fees, discounts and commissions, in connection with the offering are as follows:

|                                 |    |                   |
|---------------------------------|----|-------------------|
| Securities Act Registration Fee | \$ | 14,525,000        |
| Printing and Engraving Expenses |    | 500,000           |
| Legal Fees and Expenses         |    | 500,000           |
| Accounting Fees and Expenses    |    | 500,000           |
| Trustee Fees                    |    | 475,000           |
| Rating Agency Fees and Expenses |    | 1,200,000         |
| Listing Fees and Expenses       |    | 500,000           |
| Miscellaneous                   |    | 50,000            |
|                                 | \$ | <u>18,250,000</u> |

**Item 15. Indemnification of Directors and Officers.**

Section 145(a) of the General Corporation Law of the State of Delaware (“Delaware Corporation Law”) provides, in general, that a corporation has the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), because the person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of any other enterprise. Such indemnity may be against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and if, with respect to any criminal action or proceeding, the person did not have reasonable cause to believe the person’s conduct was unlawful.

Section 145(b) of the Delaware Corporation Law provides, in general, that a corporation has the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of any other enterprise, against any expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(g) of the Delaware Corporation Law provides, in general, that a corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director,

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officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of any other enterprise, against any liability asserted against the person in any such capacity, or arising out of the person's status as such, regardless of whether the corporation would have the power to indemnify the person against such liability under the provisions of Section 145 of the Delaware Corporation Law.

Article VIII of the bylaws of Bank of America Corporation ("Bank of America") provides for indemnification to the fullest extent authorized by the Delaware Corporation Law for any person who is or was a director or officer of Bank of America who is or was involved or threatened to be made involved in any proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was serving as a director, officer, manager or employee of Bank of America or is or was serving at the request of Bank of America as a director, officer, manager or employee of any other enterprise. Such indemnification is provided only if the director, officer, manager or employee acted in good faith and in a manner that the director, officer, manager or employee reasonably believed to be in, or not opposed to, the best interests of Bank of America, and with respect to any criminal proceeding, had no reasonable cause to believe that the conduct was unlawful.

The foregoing is only a general summary of certain aspects of the Delaware Corporation Law and Bank of America's bylaws dealing with indemnification of directors and officers, and does not purport to be complete. It is qualified in its entirety by reference to the detailed provisions of Section 145 of the Delaware Corporation Law and Article VIII of the bylaws of Bank of America.

Pursuant to Bank of America's bylaws, Bank of America may maintain a directors' and officers' insurance policy which insures the directors and officers of Bank of America against liability asserted against such persons in such capacity whether or not Bank of America would have the power to indemnify such person against such liability under the Delaware Corporation Law.

The respective Declarations of Trust of BAC Capital Trusts VI, VII, VIII, XI and XV, and NB Capital Trust III (each a "Trust" and together the "Trusts") provide that to the fullest extent permitted by applicable law, the Corporation shall indemnify each of the regular trustees of the respective Trust, any affiliate of any such regular trustee, any officer, director, shareholder, member, partner, employee, representative or agent of any such regular trustee, or any employee or agent of the Trust or its affiliates (each for purposes of this paragraph, a "Company Indemnified Person"), who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The Declarations of Trust also provide that, to the fullest extent permitted by applicable law, expenses (including reasonable attorneys' fees and expenses) incurred by a Company Indemnified Person in defending such a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in the Declaration of Trust. The Declarations of Trust further provide that the (i) Delaware Trustee (as defined therein), (ii) Property Trustee (as defined therein), (iii) any affiliate of the Delaware Trustee or the Property Trustee, (iv) and any officers, directors,

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shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Delaware Trustee or the Property Trustee (each of the persons referred to in (i) through (iv), a “Fiduciary Indemnified Person”) or a Company Indemnified Person (together with a “Fiduciary Indemnified Person, an “Indemnified Person”), shall not be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person (as defined therein) for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Persons in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by the Declaration of Trust, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person’s gross negligence or willful misconduct with respect to such acts or omissions. The Declarations of Trust further provide that Bank of America shall indemnify and hold harmless each Fiduciary Indemnified Person from and against any and all loss, liability, damage, claim or expense including taxes (other than taxes based on the income of such Fiduciary Indemnified Person) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the Trust, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties under the applicable Declaration of Trust.

The respective Declarations of Trust of BAC Capital Trusts XIII and XIV (each, a “HITS Trust” and collectively, the “HITS Trusts”) provide that, to the fullest extent permitted by applicable law, Bank of America shall indemnify and hold harmless each Trustee (as defined therein); any affiliate of a Trustee, any officer, director, shareholder, employee, representative or agent of any Trustee; and any employee or agent of the HITS Trust (referred to as an “Indemnified Person”) from and against any loss, damage, liability, action, suit, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or dissolution of the HITS Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the HITS Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by the Declaration of Trust, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence, bad faith or willful misconduct with respect to such acts or omissions.

The respective amended and restated trust agreements of Merrill Lynch Capital Trust I, Merrill Lynch Capital Trust II and Merrill Lynch Capital Trust III (collectively, the “ML Capital Trusts”) provide that, to the fullest extent permitted by law, Bank of America shall indemnify each administrative trustee of the applicable trust, any affiliate of any such administrative trustee, any officer, director, shareholder, member, partner, employee, representative or agent of any administrative trustee or any affiliate thereof, or any officer, employee or agent of the trust or its affiliates (each for purposes of this paragraph, a “Company Indemnified Person”), from and against any loss, damage, liability, tax, penalty, expense, judgment, fine and amounts paid in settlement incurred by such Company Indemnified Person in connection with any threatened, pending or completed action, suit, proceeding or claim of any kind or nature (including any civil, criminal, administrative or investigative action, suit, proceeding and claim) relating to or arising from the creation, operation or termination of the trust or any act or omission performed or omitted to be performed by such Company Indemnified Person in connection therewith, including acts and omissions constituting negligence, if he or she acted in a manner he or she believed in good faith to be in or not opposed to the best interests of the trust, except that no Company Indemnified Person shall be entitled to be indemnified in respect of any loss incurred by such person to the extent such loss resulted from the gross negligence or willful misconduct of such person. The trust agreements also provide that expenses (including attorneys’ fees) incurred by a



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Company Indemnified Person in defending such a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by Bank of America in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by Bank of America as authorized in the trust agreement. The trust agreements also provide that Bank of America or the respective trust may purchase and maintain insurance on behalf of any Company Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not Bank of America would have the power to indemnify him against such liability under the trust agreement.

The respective amended and restated declarations of trust of Merrill Lynch Preferred Capital Trust III, Merrill Lynch Preferred Capital Trust IV and Merrill Lynch Preferred Capital Trust V (collectively, the "ML Preferred Trusts") provide that, to the fullest extent permitted by applicable law, Bank of America shall indemnify and hold harmless each regular trustee of the applicable trust, any affiliate of any regular trustee, any officer, director, shareholder, member, partner, employee, representative or agent of any regular trustee or any officer, director, shareholder, member, partner, employee, representative or agent of the trust or its affiliates (each for purposes of this paragraph a "Company Indemnified Person"), who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the trust) by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The declarations of trust also provide that Bank of America shall indemnify, to the fullest extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the trust to procure a judgment in its favor by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Company Indemnified Person shall have been adjudged to be liable to the trust unless the applicable court determines that such person is fairly and reasonable entitled to indemnity for such expenses. The declarations of trust further provide that expenses (including attorneys' fees) incurred by a Company Indemnified Person in defending such a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by Bank of America in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by Bank of America as authorized in the declaration of trust. Under the respective declarations of trust, Bank of America or the trust may purchase and maintain insurance on behalf of any Company Indemnified Person against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such whether or not Bank of America would have the power to indemnify him against such liability under the declaration of trust.

The respective amended and restated limited partnership agreements of Merrill Lynch Preferred Funding III, L.P., Merrill Lynch Preferred Funding IV, L.P. and Merrill Lynch Preferred Funding V, L.P. (each a "Partnership") provide that, to the fullest extent permitted by applicable law, the applicable Partnership shall indemnify and hold harmless each of the general

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partner, any special representative, any affiliate of the general partner or any special representative, any officer, director, shareholder, member, partner, employee, representative or agent of the general partner or any special representative, or any of their respective affiliates, or any employee or agent of the Partnership or its affiliates (each a "Partnership Indemnified Person"), from and against any loss, damage or claim incurred by such Partnership Indemnified Person by reason of any act or omission performed or omitted by such Partnership Indemnified Person in good faith on behalf of the Partnership and in a manner such Partnership Indemnified Person reasonably believed to be within the scope of authority conferred on such Partnership Indemnified Person by the limited partnership agreement, except that no Partnership Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Partnership Indemnified Person by reason of gross negligence or willful misconduct with respect to such acts or omissions. Each limited partnership agreement also provides that, to the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Partnership Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Partnership Indemnified Person to repay such amount if it shall be determined that the Partnership Indemnified Person is not entitled to be indemnified as authorized in the limited partnership agreement.

The administrative trustees of the ML Capital Trusts and the regular trustees of the Trusts, the HITS Trusts and ML Preferred Trusts are covered by insurance policies indemnifying them against certain liabilities, including certain liabilities arising under the Securities Act, which might be incurred by them in such capacity and against which they cannot be indemnified by Bank of America or the applicable trust.

In addition, certain sections of the forms of underwriting or distribution agreements filed or to be filed as exhibits to this registration statement provide for indemnification of Bank of America and its directors and officers by the underwriters or agents against certain liabilities, including certain liabilities under the Securities Act, in connection with certain offerings of securities under the Registration Statement. From time to time similar provisions have been contained in other agreements relating to other securities of Bank of America.

### **Item 16. List of Exhibits.**

| <u>Exhibit Index</u> | <u>Description</u>  |
|----------------------|---|
| 1.1                  | Form of Underwriting Agreement for Debt Securities, incorporated herein by reference to Exhibit 1.1 of the Registration Statement on Form S-3 (No. 333-133852) of Bank of America Corporation (the "Company") |
| 1.2                  | Form of Underwriting Agreement for Preferred Stock, incorporated herein by reference to Exhibit 1.2 of the Company's Registration Statement on Form S-3 (No. 333-133852)                                      |
| 1.3                  | Form of Underwriting Agreement for Common Stock, incorporated herein by reference to Exhibit 1.3 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 1.4                  | Form of Underwriting Agreement for Depositary Shares, incorporated herein by reference to Exhibit 1.4 of the Company's Registration Statement on Form S-3 (No. 333-158663)                                    |
| 1.5                  | Form of Underwriting Agreement for Warrants and Units, incorporated herein by reference to Exhibit 1.4 of the Company's Registration Statement on Form S-3 (No. 333-133852)                                   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 1.6                      | Form of Underwriting Agreement for Purchase Contracts*   |
| 1.7                      | Intentionally Omitted  |
| 1.8                      | Distribution Agreement dated as of April 10, 2008, between Bank of America Corporation, Banc of America Securities LLC, and Banc of America Investment Services, Inc., incorporated herein by reference to Exhibit 1.1 of the Company's Current Report on Form 8-K (File No. 1-6523) filed April 15, 2008  |
| 1.9                      | Letter agreement dated January 2, 2009, between Bank of America Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and First Republic Securities Company, LLC, incorporated herein by reference to Exhibit 1.9 of the Company's Registration Statement on Form S-3 (No. 333-158663)  |
| 1.10                     | Form of Supplement to Series L Distribution Agreement, between Bank of America Corporation, Banc of America Securities LLC, Banc of America Investment Services, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and First Republic Securities Company, LLC, incorporated herein by reference to Exhibit 1.10 of the Company's Registration Statement on Form S-3 (No. 333-158663) |
| 1.11                     | Form of Second Supplement to Series L Distribution Agreement, between Bank of America Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated ††  |
| 1.12                     | Amended and Restated Selling Agent Agreement among Bank of America Corporation and the agents named therein, incorporated herein by reference to Exhibit 1.1 of the Company's Current Report on Form 8-K (File No. 1-6523) filed July 16, 2014.  |
| 4.1                      | Amended and Restated Certificate of Incorporation of Bank of America Corporation, including Certificates of Designation and other descriptions of outstanding series of Preferred Stock  |
| 4.2                      | Amended and Restated Bylaws of Bank of America Corporation, incorporated herein by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K (File No. 1-6523) filed October 1, 2014  |
| 4.3                      | Indenture dated as of January 1, 1995 (for senior debt securities), between NationsBank Corporation and BankAmerica National Trust Company, as trustee (the "1995 Company Senior Indenture"), incorporated herein by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-3 (No. 33-57533)   |
| 4.4                      | Successor Trustee Agreement effective December 15, 1995, between NationsBank Corporation and First Trust of New York, National Association (now U.S. Bank Trust National Association), as successor trustee to BankAmerica National Trust Company, incorporated herein by reference to Exhibit 4.2 of the Company's Registration Statement on Form S-3 (No. 333-07229)                       |
| 4.5                      | First Supplemental Indenture to the 1995 Company Senior Indenture, dated as of September 18, 1998, among NationsBank Corporation, NationsBank (DE) Corporation and U.S. Bank Trust National Association, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed November 18, 1998   |
| 4.6                      | Second Supplemental Indenture to the 1995 Company Senior Indenture, dated as of May 7, 2001, among Bank of America Corporation, U.S. Bank Trust National Association, as Prior Trustee, and The Bank of New York, as Successor Trustee, incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 14, 2001                    |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.7                      | Third Supplemental Indenture to the 1995 Company Senior Indenture, dated as of July 28, 2004, between Bank of America Corporation (successor to NationsBank Corporation) and The Bank of New York (successor to U.S. Bank Trust National Association), incorporated herein by reference to Exhibit 4.2 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 27, 2004 |
| 4.8                      | Fourth Supplemental Indenture to the 1995 Company Senior Indenture, dated as of April 28, 2006, between Bank of America Corporation and The Bank of New York Trust Company, N.A. (successor to The Bank of New York), incorporated herein by reference to Exhibit 4.6 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.9                      | Agreement of Appointment and Acceptance dated as of December 29, 2006, between Bank of America Corporation and The Bank of New York Trust Company, N.A. (successor trustee to The Bank of New York), incorporated herein by reference to Exhibit 4(aaa) of the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2006                                 |
| 4.10                     | Fifth Supplemental Indenture to the 1995 Company Senior Indenture, dated as of December 1, 2008, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York), incorporated herein by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K (File No. 1-6523) filed December 5, 2008                         |
| 4.11                     | Sixth Supplemental Indenture to the 1995 Company Senior Indenture, dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A.(successor to The Bank of New York), incorporated herein by reference to Exhibit 4(ee) of the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010         |
| 4.12                     | Form of Senior Registered Note, incorporated herein by reference to Exhibit 4.7 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.13                     | Form of Global Senior Medium-Term Note, Series L††   |
| 4.14                     | Form of Master Global Senior Medium-Term Note, Series L††  |
| 4.15                     | Indenture dated as of January 1, 1995 (for subordinated debt securities), between NationsBank Corporation and The Bank of New York, as trustee (the "the 1995 Company Subordinated Indenture"), incorporated herein by reference to Exhibit 4.5 of the Company's Registration Statement on Form S-3 (No. 33-57533)   |
| 4.16                     | First Supplemental Indenture to the 1995 Company Subordinated Indenture, dated as of August 28, 1998, among NationsBank Corporation, NationsBank (DE) Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.8 of the Company's Current Report on Form 8-K (File No. 1-6523) filed November 18, 1998  |
| 4.17                     | Second Supplemental Indenture to the 1995 Company Subordinated Indenture, dated as of January 25, 2007, between Bank of America Corporation and The Bank of New York Trust Company, N.A., incorporated herein by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-4 (No. 333-141361)   |
| 4.18                     | Third Supplemental Indenture to the 1995 Company Subordinated Indenture, dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A.(successor to The Bank of New York), incorporated herein by reference to Exhibit 4(ff) of the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.19                     | Form of Subordinated Registered Note, incorporated herein by reference to Exhibit 4.10 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.20                     | Form of Global Subordinated Medium-Term Note, Series L††  |
| 4.21                     | Indenture dated as of November 1, 1992, between NationsBank Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4.1 to the Company's Amendment No. 1 to Current Report on Form 8-K (File No. 1-6523) filed March 1, 1993  |
| 4.22                     | First Supplemental Indenture dated as of July 1, 1993, between NationsBank Corporation and The Bank of New York, as Trustee, to the Indenture dated as of November 1, 1992 between NationsBank Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K (File No. 1-6523) filed July 7, 1993   |
| 4.23                     | Second Supplemental Indenture dated as of August 28, 1998, among NationsBank Corporation, NationsBank (DE) Corporation and The Bank of New York, as Trustee, to the Indenture dated as of November 1, 1992 between NationsBank Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4(i) to the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 1998                          |
| 4.24                     | Indenture dated as of September 1, 1989 between NCNB Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (Registration No. 33-30717)  |
| 4.25                     | First Supplemental Indenture dated as of August 28, 1998, among NationsBank Corporation (successor to NCNB Corporation), NationsBank (DE) Corporation and The Bank of New York, as Trustee, to the Indenture dated as of September 1, 1989 between NCNB Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4(f) to the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 1998 |
| 4.26-<br>4.28            | Intentionally omitted   |
| 4.29                     | Indenture dated as of October 1, 1992, between Fleet Financial Group, Inc. and The First National Bank of Chicago, as Trustee, incorporated herein by reference to Exhibit 4(d) to the Registration Statement on Form S-3/A (No. 33-50216) of Fleet Financial Group, Inc.   |
| 4.30                     | First Supplemental Indenture dated as of November 30, 1992, between Fleet Financial Group, Inc. and The First National Bank of Chicago, as Trustee, incorporated herein by reference to Exhibit 4 to Fleet Financial Group, Inc.'s Current Report on Form 8-K (File No. 1-06366) filed December 2, 1992   |
| 4.31                     | Second Supplemental Indenture dated as of March 18, 2004, among Bank of America, FleetBoston Financial Corporation (successor to Fleet Financial Group, Inc.), and J.P. Morgan Trust Company, N.A. (successor to The First National Bank of Chicago), as Trustee, incorporated herein by reference to Exhibit 4.59 to Bank of America's Amendment No. 1 to Registration Statement on Form S-3 (No. 333-112708)  |
| 4.32                     | Indenture dated as of September 29, 1992, between MBNA Corporation and Bankers Trust Company, as Trustee, incorporated herein by reference to Exhibit 4(a) to the Registration Statement on Form S-3 (No. 33-95600) of MBNA Corporation   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.33                     | First Supplemental Indenture dated as of December 21, 2005, among Bank of America Corporation, MBNA Corporation and Deutsche Bank Trust Company Americas (successor to Bankers Trust Company), as Trustee, incorporated herein by reference to Exhibit 4.32 to the Company's Registration Statement on Form S-3 (No. 333-130821)   |
| 4.34                     | Indenture dated as of February 1, 2005, among Countrywide Financial Corporation, Countrywide Home Loans, Inc. and The Bank of New York, as Trustee (the "2005 Countrywide Indenture"), incorporated herein by reference to Exhibit 4.58 of Countrywide Financial Corporation's Quarterly Report on Form 10-Q (File No. 1-12331-01) for the quarter ended March 31, 2006  |
| 4.35                     | First Supplemental Indenture dated as of July 1, 2008, among Red Oak Merger Corporation, Countrywide Financial Corporation, Countrywide Home Loans, Inc., and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2005 Countrywide Indenture, incorporated herein by reference to Exhibit 4.2 of Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed July 8, 2008  |
| 4.36                     | Second Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation), Countrywide Home Loans, Inc. and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2005 Countrywide Indenture, incorporated herein by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008                         |
| 4.37                     | Third Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Home Loans, Inc. and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2005 Countrywide Indenture, incorporated herein by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008  |
| 4.38-<br>4.42            | Intentionally omitted  |
| 4.43                     | Indenture dated as of December 1, 2001, among Countrywide Home Loans, Inc., Countrywide Financial Corporation (formerly known as Countrywide Credit Industries, Inc.) and The Bank of New York, as Trustee (the "2001 Countrywide Indenture"), incorporated herein by reference to Exhibit 4.25 to Countrywide Financial Corporation's Annual Report on Form 10-K (File No. 1-12331-01) for the year ended December 31, 2003   |
| 4.44                     | First Supplemental Indenture dated as of July 1, 2008, among Red Oak Merger Corporation, Countrywide Home Loans, Inc., Countrywide Financial Corporation (formerly known as Countrywide Credit Industries, Inc.) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2001 Countrywide Indenture, incorporated herein by reference to Exhibit 4.4 of Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed July 8, 2008 |
| 4.45                     | Second Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Home Loans, Inc., Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2001 Countrywide Indenture, incorporated herein by reference to Exhibit 4.15 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008                        |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.46                     | Third Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2001 Countrywide Indenture, incorporated herein by reference to Exhibit 4.16 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008   |
| 4.47                     | Agreement of Resignation, Appointment and Acceptance dated as of December 10, 2008, among Bank of America Corporation, The Bank of New York Mellon (formerly The Bank of New York) and The Bank of New York Mellon Trust Company, N.A., incorporated herein by reference to Exhibit 4.76 of the Company's Post-Effective Amendment No.1 to the Registration Statement on Form S-3 (No. 333-158663)   |
| 4.48                     | Indenture dated as of May 16, 2006, between Countrywide Financial Corporation and The Bank of New York, as Trustee (the "2006 Countrywide Indenture"), relating to the 6.25% Subordinated Notes due May 15, 2016, incorporated herein by reference to Exhibit 4.27 to Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed May 16, 2006  |
| 4.49                     | First Supplemental Indenture dated as of July 1, 2008, among Red Oak Merger Corporation, Countrywide Financial Corporation and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2006 Countrywide Indenture, incorporated herein by reference to Exhibit 4.1 of Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed July 8, 2008   |
| 4.50                     | Second Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2006 Countrywide Indenture, incorporated herein by reference to Exhibit 4.7 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008   |
| 4.51                     | Agreement of Resignation, Appointment and Acceptance, dated as of January 1, 2009, among Bank of America Corporation (successor in interest to Countrywide Financial Corporation), as issuer; the Bank of New York Mellon, as the resigning trustee, and Deutsche Bank Trust Company Americas, as successor trustee, relating to the 2006 Countrywide Indenture, incorporated herein by reference to Exhibit 4.172 of the Company's Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (Registration Statement No. 333-158663) |
| 4.52                     | Amended and Restated Senior Indenture dated as of July 1, 2001 (for senior Internotes) between Bank of America Corporation and The Bank of New York, as trustee (the "Amended and Restated Senior Indenture"), incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (No. 333-65750)   |
| 4.53                     | First Supplemental Indenture dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York), supplementing the Amended and Restated Senior Indenture, incorporated herein by reference to Exhibit 4(gg) of the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.54                     | Amended and Restated Subordinated Indenture dated as of July 1, 2001 (for subordinated Internotes) between Bank of America Corporation and The Bank of New York, as trustee (the “Amended and Restated Subordinated Indenture”), incorporated herein by reference to Exhibit 4.2 to the Company’s Registration Statement on Form S-3 (No. 333-65750)   |
| 4.55                     | First Supplemental Indenture dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York), supplementing the Amended and Restated Subordinated Indenture, incorporated herein by reference to Exhibit 4(hh) of the Company’s Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010 |
| 4.56                     | Restated Senior Indenture dated as of January 1, 2001 between Bank of America Corporation and The Bank of New York, as trustee, incorporated herein by reference to Exhibit 4.1 of the Company’s Amendment No. 1 to Registration Statement on Form S-3 (No. 333-47222)   |
| 4.57                     | Restated Subordinated Indenture dated as of January 1, 2001 between Bank of America Corporation and The Bank of New York, as trustee, incorporated herein by reference to Exhibit 4.2 of the Company’s Amendment No. 1 to Registration Statement on Form S-3 (No. 333-47222)   |
| 4.58                     | Form of Certificate for Preferred Stock, incorporated herein by reference to Exhibit 4.14 of the Company’s Registration Statement on Form S-3 (No. 333-112708)   |
| 4.59                     | Specimen Common Stock Certificate, incorporated herein by reference to Exhibit 4.15 of the Company’s Registration Statement on Form S-3 (No. 333-112708)   |
| 4.60                     | Form of Deposit Agreement, incorporated herein by reference to Exhibit 4.20 of the Company’s Registration Statement on Form S-3 (No. 333-158663)   |
| 4.61                     | Form of Depositary Receipt (included in Exhibit 4.60)  |
| 4.62                     | Form of Warrant Agreement for Universal Warrant*   |
| 4.63                     | Form of Warrant Agreement for Warrants Sold Alone*   |
| 4.64                     | Form of Warrant Agreement for Warrants Sold Attached to Debt Securities*   |
| 4.65                     | Form of Prepaid Unit Agreement, including form of prepaid unit certificate*  |
| 4.66                     | Form of Non-Prepaid Unit Agreement*  |
| 4.67                     | Form of Put Warrant (included in Exhibit 4.63)   |
| 4.68                     | Form of Call Warrant (included in Exhibit 4.63)  |
| 4.69                     | Form of Prepaid Purchase Contract*   |
| 4.70                     | Form of Non-Prepaid Purchase Contract*   |
| 4.71-<br>4.81            | Intentionally omitted  |
| 4.82                     | Restated Indenture dated as of November 1, 2001 (for junior subordinated debt securities) between Bank of America Corporation and The Bank of New York, as Trustee (the “2001 Company Restated Indenture”), incorporated herein by reference to Exhibit 4.10 of Amendment No. 1 to the Company’s Registration Statement on Form S-3 (No. 333-70984)  |



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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.83-<br>4.91            | Intentionally omitted   |
| 4.92                     | Certificate of Trust of BAC Capital Trust VI, incorporated herein by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-3 (No. 333-104151)  |
| 4.93                     | Certificate of Trust of BAC Capital Trust VII, incorporated herein by reference to Exhibit 4.4 of the Company's Registration Statement on Form S-3 (No. 333-104151)   |
| 4.94                     | Certificate of Trust of BAC Capital Trust VIII, incorporated herein by reference to Exhibit 4.2 of the Company's Registration Statement on Form S-3 (No. 333-123714)  |
| 4.95                     | Intentionally omitted   |
| 4.96                     | Certificate of Trust of BAC Capital Trust XI, incorporated herein by reference to Exhibit 4.5 of the Company's Registration Statement on Form S-3 (No. 333-123714)  |
| 4.97                     | Intentionally omitted   |
| 4.98                     | Certificate of Trust of BAC Capital Trust XIII, incorporated herein by reference to Exhibit 4.25 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.99                     | Certificate of Trust of BAC Capital Trust XIV, incorporated herein by reference to Exhibit 4.26 of the Company's Registration Statement on Form S-3 (No. 333-133852)  |
| 4.100                    | Certificate of Trust of BAC Capital Trust XV, incorporated herein by reference to Exhibit 4.27 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.101                    | Intentionally omitted   |
| 4.102                    | Certificate of Trust of NB Capital Trust III, incorporated herein by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-3 (No. 333-15375)   |
| 4.103-<br>4.108          | Intentionally omitted   |
| 4.109                    | Amended and Restated Declaration of Trust of BAC Capital Trust VI dated as of February 24, 2005 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed March 9, 2005   |
| 4.110                    | Amended and Restated Declaration of Trust of BAC Capital Trust VII dated as of August 4, 2005 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 11, 2005   |
| 4.111                    | Amended and Restated Declaration of Trust of BAC Capital Trust VIII dated as of August 17, 2005 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 26, 2005 |
| 4.112                    | Intentionally omitted   |
| 4.113                    | Amended and Restated Declaration of Trust of BAC Capital Trust XI dated as of May 15, 2006 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed May 23, 2006         |
| 4.114                    | Intentionally omitted   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.115                    | Amended and Restated Declaration of Trust of BAC Capital Trust XIII dated as of February 16, 2007 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 16, 2007 |
| 4.116                    | Amended and Restated Declaration of Trust of BAC Capital Trust XIV dated as of February 16, 2007 (including form of capital security), incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 16, 2007  |
| 4.117                    | Amended and Restated Declaration of Trust of BAC Capital Trust XV dated May 23, 2007 (including form of capital security), incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 1, 2007                   |
| 4.118                    | Intentionally omitted   |
| 4.119                    | Amended and Restated Declaration of Trust of NB Capital Trust III dated January 22, 1997 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 3, 1997           |
| 4.120-<br>4.130          | Intentionally omitted   |
| 4.131                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust VI, dated as of November 7, 2011††  |
| 4.132                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust VI, dated as of November 10, 2011††   |
| 4.133                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust VII, dated as of November 7, 2011††   |
| 4.134                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust VII, dated as of November 10, 2011††  |
| 4.135                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust VIII, dated as of November 7, 2011††  |
| 4.136                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust VIII, dated as of November 10, 2011††   |
| 4.137-<br>4.138          | Intentionally omitted   |
| 4.139                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XI, dated as of November 7, 2011††  |
| 4.140                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XI, dated as of November 10, 2011††   |
| 4.141-<br>4.142          | Intentionally omitted   |
| 4.143                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIII, dated as of December 8, 2011††  |
| 4.144                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIII, dated as of January 12, 2012††  |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.145                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIV, dated as of December 8, 2011††   |
| 4.146                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIV, dated as of January 12, 2012††   |
| 4.147                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XV, dated as of November 7, 2011††  |
| 4.148                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XV, dated as of November 10, 2011††   |
| 4.149-<br>4.150          | Intentionally omitted   |
| 4.151                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of NB Capital Trust III, dated as of November 7, 2011††  |
| 4.152                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of NB Capital Trust III, dated as of November 10, 2011††   |
| 4.153-<br>4.159          | Intentionally omitted   |
| 4.160                    | Sixth Supplemental Indenture dated as of March 8, 2005 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed March 9, 2005                                 |
| 4.161                    | Seventh Supplemental Indenture dated as of August 10, 2005 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 11, 2005                           |
| 4.162                    | Eighth Supplemental Indenture dated as of August 25, 2005 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 26, 2005                            |
| 4.163                    | Intentionally omitted   |
| 4.164                    | Eleventh Supplemental Indenture dated as of May 23, 2006 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed May 23, 2006                                |
| 4.165-<br>4.167          | Intentionally omitted   |
| 4.168                    | Fifteenth Supplemental Indenture dated as of May 31, 2007 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York Trust Company, N.A., as successor Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 1, 2007 |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.169-<br>4.172          | Intentionally omitted   |
| 4.173                    | Indenture dated as of November 27, 1996 between NationsBank Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.10 of the Company's Amendment No. 2 to Registration Statement on Form S-3 (Registration No. 333-15375)  |
| 4.174                    | Intentionally omitted   |
| 4.175                    | Third Supplemental Indenture dated as of February 3, 1997 (including form of junior subordinated note) between NationsBank Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 3, 1997 |
| 4.176-<br>4.181          | Intentionally omitted   |
| 4.182                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust VI, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed March 9, 2005  |
| 4.183                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust VII, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 11, 2005   |
| 4.184                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust VIII, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 26, 2005  |
| 4.185                    | Intentionally omitted   |
| 4.186                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust XI, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed May 23, 2006   |
| 4.187                    | Intentionally omitted   |
| 4.188                    | HITS Guarantee Agreement with respect to BAC Capital Trust XIII, incorporated herein by reference to Exhibit 4.12 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 15, 2007   |
| 4.189                    | HITS Guarantee Agreement with respect to BAC Capital Trust XIV, incorporated herein by reference to Exhibit 4.13 of the Company's Current Report on Form 8-K File (No. 1-6523) filed February 15, 2007  |
| 4.190                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust XV, incorporated herein by reference to Exhibit 4.6 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 1, 2007   |
| 4.191                    | Intentionally omitted   |
| 4.192                    | Form of Guarantee Agreement with respect to NB Capital Trust III, incorporated herein by reference to Exhibit 4.12 of the Company's Registration Statement on Form S-3 (Registration No. 333-18273)   |

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| <u>Exhibit Index</u> | <u>Description</u>   |
|----------------------|--|
| 4.193                | Senior Indenture, dated as of April 1, 1983, as amended and restated as of April 1, 1987, between Merrill Lynch & Co., Inc. (“Merrill Lynch”) and The Bank of New York Mellon, <sup>1</sup> as Trustee (the “1983 ML Senior Indenture”), and the Supplemental Indenture thereto dated as of March 15, 1990, incorporated by reference to Exhibit 4(i) to Merrill Lynch’s Annual Report on Form 10-K (File No. 1-7182) for the fiscal year ended December 31, 1999 (the “1999 ML 10-K”) |
| 4.194                | Sixth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of October 25, 1993, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(ii) to the 1999 ML 10-K  |
| 4.195                | Twelfth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of September 1, 1998, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(a) to Merrill Lynch’s Current Report on Form 8-K (File No 1-7182) filed October 21, 1998  |
| 4.196                | Fifteenth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of October 14, 2003, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b)(ix) to Merrill Lynch’s Registration Statement on Form 5-3 (No. 333-109802)  |
| 4.197                | Eighteenth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of October 21, 2004, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b)(xiv) to Merrill Lynch’s Registration Statement on Form 5-3 (No. 333122639)   |
| 4.198                | Twentieth Supplemental Indenture to the 1983 ML Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |
| 4.199                | Senior Indenture, dated as of October 1, 1993, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon (the “1993 ML Senior Indenture”), incorporated by reference to Exhibit 4(iv) to Merrill Lynch’s Annual Report on Form 10-K (File No. 1-7182) for the fiscal year ended December 25, 1998  |
| 4.200                | First Supplemental Indenture to the 1993 ML Senior Indenture, dated as of June 1, 1998, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(a) to Merrill Lynch’s Current Report on Form 8-K (File No. 1-7182) filed July 2, 1998  |
| 4.201                | Second Supplemental Indenture to the 1993 ML Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††   |
| 4.202                | Form of Subordinated Indenture, dated as of December 17, 1996, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as Trustee (the “1996 ML Subordinated Indenture”), incorporated by reference to Exhibit 4.7 to Amendment No. 2 to Merrill Lynch’s Registration Statement on Form S-3 (No 333-16603)  |

<sup>1</sup> As used in this section of this Registration Statement, “The Bank of New York Mellon” means The Bank of New York Mellon, a New York banking corporation and successor to the corporate trust business of The Bank of New York, JPMorgan Chase Bank, N.A., the entity formerly known as JPMorgan Chase Bank, The Chase Manhattan Bank and Chemical Bank (successor by merger to Manufacturers Hanover Trust Company).

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| <u>Exhibit Index</u> | <u>Description</u>   |
|----------------------|--|
| 4.203                | Supplemental Indenture to the 1996 ML Subordinated Indenture, dated as of May 16, 2006, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as trustee, incorporated by reference to Exhibit 4(a) to Merrill Lynch's Current Report on Form 8-K (File No 1-7182) filed May 16, 2006   |
| 4.204                | Second Supplemental Indenture to the 1996 ML Subordinated Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |
| 4.205                | Junior Subordinated Indenture, dated as of December 14, 2006, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as trustee (the "2006 ML Junior Subordinated Indenture), incorporated by reference to Exhibit 4(a) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006  |
| 4.206                | First Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of December 14, 2006, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006   |
| 4.207                | Second Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of May 2, 2007, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed May 2, 2007  |
| 4.208                | Third Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of August 22, 2007, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed August 22, 2007   |
| 4.209                | Fourth Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††   |
| 4.210                | Form of Certificate of Trust of Merrill Lynch Preferred Capital Trust III, Merrill Lynch Preferred Capital Trust IV, and Merrill Lynch Preferred Capital Trust V, incorporated by reference to Exhibit 4.1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-42859)   |
| 4.211                | Form of Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust III, Merrill Lynch Preferred Capital Trust IV and Merrill Lynch Preferred Capital Trust V (including form of trust preferred security), incorporated by reference to Exhibit 4.2 to Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-42859) |
| 4.212                | Form of Certificate of Limited Partnership of Merrill Lynch Preferred Funding III, L.P., Merrill Lynch Preferred Funding IV, L.P. and Merrill Lynch Preferred Funding V, L.P., incorporated by reference to Exhibit 4.3 to Merrill Lynch's Registration Statement on Form S-3 (No 333-42859)   |
| 4.213                | Amendment to the Certificate of Limited Partnership of Merrill Lynch Preferred Funding III, L.P., dated as of September 30, 2013†  |
| 4.214                | Amendment to the Certificate of Limited Partnership of Merrill Lynch Preferred Funding IV, L.P., dated as of September 30, 2013†   |
| 4.215                | Amendment to the Certificate of Limited Partnership of Merrill Lynch Preferred Funding V, L.P., dated as of September 30, 2013†  |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.216                    | Form of Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding III, L.P., Merrill Lynch Preferred Funding IV, L.P. and Merrill Lynch Preferred Funding V L.P. (including form of partnership preferred security), incorporated by reference to Exhibit 4.4 to Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-42859) |
| 4.217                    | Trust Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Preferred Capital Trust III <sup>††</sup>  |
| 4.218                    | Trust Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Preferred Capital Trust IV <sup>††</sup>   |
| 4.219                    | Trust Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Preferred Capital Trust V <sup>††</sup>  |
| 4.220                    | Partnership Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and Merrill Lynch Preferred Funding III, L.P. <sup>††</sup>   |
| 4.221                    | Partnership Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and Merrill Lynch Preferred Funding IV, L.P. <sup>††</sup>  |
| 4.222                    | Partnership Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and Merrill Lynch Preferred Funding V, L.P. <sup>††</sup>   |
| 4.223                    | Affiliate Debenture Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, in connection with Merrill Lynch Preferred Funding III, L.P. <sup>††</sup>  |
| 4.224                    | Affiliate Debenture Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, in connection with Merrill Lynch Preferred Funding IV, L.P. <sup>††</sup>   |
| 4.225                    | Affiliate Debenture Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trust, in connection with Merrill Lynch Preferred Funding V, L.P. <sup>††</sup>  |
| 4.226                    | Certificate of Trust of Merrill Lynch Capital Trust I, incorporated by reference to Exhibit 4(b) to Post-Effective Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)   |
| 4.227                    | Trust Agreement of Merrill Lynch Capital Trust I, incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)  |
| 4.228                    | Amended and Restated Trust Agreement of Merrill Lynch Capital Trust I (including form of trust preferred security), incorporated by reference to Exhibit 4(e) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006   |
| 4.229                    | Guarantee Agreement between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Capital Trust I, incorporated by reference to Exhibit 4(f) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006   |

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| <u>Exhibit Index</u> | <u>Description</u>  |
|----------------------|---|
| 4.230                | First Amendment to Merrill Lynch Capital Trust I Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |
| 4.231                | Certificate of Trust of Merrill Lynch Capital Trust II, incorporated by reference to Exhibit 4(b) to Post-Effective Amendment No. 2 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)  |
| 4.232                | Trust Agreement of Merrill Lynch Capital Trust II, incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 2 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)   |
| 4.233                | Amended and Restated Trust Agreement of Merrill Lynch Capital Trust II, including form of Trust Preferred Security, incorporated by reference to Exhibit 4(e) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed May 2, 2007   |
| 4.234                | Guarantee Agreement between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Capital Trust II, incorporated by reference to Exhibit 4(f) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed May 2, 2007                  |
| 4.235                | First Amendment to Merrill Lynch Capital Trust II Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††   |
| 4.236                | Certificate of Trust of Merrill Lynch Capital Trust III, incorporated by reference to Exhibit 4(b) to Post-Effective Amendment No. 3 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)   |
| 4.237                | Trust Agreement of Merrill Lynch Capital Trust III, incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 3 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)  |
| 4.238                | Amended and Restated Trust Agreement of Merrill Lynch Capital Trust III, including form of Trust Preferred Security, incorporated by reference to Exhibit 4(e) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed August 22, 2007  |
| 4.239                | Guarantee Agreement between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Capital Trust III, incorporated by reference to Exhibit 4(f) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed August 22, 2007             |
| 4.240                | First Amendment to Merrill Lynch Capital Trust III Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |
| 4.241                | Bank of America Corporation Senior InterNotes® Master Registered Global Senior Note, incorporated herein by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K (File No. 1-6523) filed July 16, 2014  |
| 4.242                | Bank of America Corporation Subordinated InterNotes® Master Registered Global Subordinated Note, incorporated herein by reference to Exhibit 4.2 of the Company's Current Report on Form 8-K (File No. 1-6523) filed July 16, 2014  |
| 4.243                | Amendment to Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding III, L.P. ("Partnership III"), dated as of March 7, 2014, incorporated herein by reference to Exhibit 99.2 to Partnership III's Current Report on Form 8-K (File No. 1-7182-05) filed March 7, 2014 |



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| <u>Exhibit Index</u> | <u>Description</u>   |
|----------------------|--|
| 4.244                | Amendment to Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding IV, L.P. (“Partnership IV”), dated as of March 7, 2014, incorporated herein by reference to Exhibit 99.2 to Partnership IV’s Current Report on Form 8-K (File No. 1-7182-07) filed March 7, 2014 |
| 4.245                | Amendment to Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding V, L.P. (“Partnership V”), dated as of March 7, 2014, incorporated herein by reference to Exhibit 99.2 to Partnership V’s Current Report on Form 8-K (File No. 1-7182-09) filed March 7, 2014    |
| 5.1                  | Opinion of McGuireWoods LLP, regarding legality of securities being registered   |
| 5.2                  | Opinion of Richards, Layton & Finger, P.A. as to Bank of America Corporation capital trusts†   |
| 5.3                  | Opinion of McGuireWoods LLP regarding legality of securities issued by a predecessor company††   |
| 5.4                  | Opinion of Richards, Layton & Finger, P.A., as to Merrill Lynch capital trusts and limited partnerships†   |
| 5.5                  | Opinion of McGuireWoods LLP, regarding legality of InterNotes®   |
| 8.1                  | Opinion of Morrison & Foerster LLP, regarding certain tax matters  |
| 8.2                  | Opinion of Morrison & Foerster LLP, regarding certain tax matters related to InterNotes®   |
| 12.1                 | Calculation of Ratio of Earnings to Fixed Charges, and Ratio of Earnings to Fixed Charges and Preferred Dividends, incorporated herein by reference to Exhibit 12 of the Company’s Quarterly Report on Form 10-Q (File No. 1-6523) for the quarter ended September 30, 2014                            |
| 23.1                 | Consent of McGuireWoods LLP (included in Exhibit 5.1)  |
| 23.2                 | Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.2)   |
| 23.3                 | Consent of Morrison & Foerster LLP (included in Exhibit 8.1)   |
| 23.4                 | Consent of PricewaterhouseCoopers LLP  |
| 23.5-<br>23.7        | Intentionally omitted  |
| 23.8                 | Consent of McGuireWoods LLP (included in Exhibit 5.3)  |
| 23.9                 | Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.4)   |
| 23.10                | Consent of McGuireWoods LLP (included in Exhibit 5.5)  |
| 23.11                | Consent of Morrison & Foerster LLP (included in Exhibit 8.2)   |
| 24.1                 | Power of Attorney  |
| 25.1                 | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Senior Trustee, on Form T-1, with respect to the 1995 Company Senior Indenture described above in Exhibit 4.3††  |
| 25.2                 | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the 1995 Company Subordinated Indenture described above in Exhibit 4.15††   |
| 25.3                 | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.21††   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 25.4                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.24††                      |
| 25.5                     | Intentionally omitted   |
| 25.6                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.29 ††                     |
| 25.7                     | Statement of Eligibility of Deutsche Bank Trust Company Americas, as Senior Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.32 ††                                      |
| 25.8                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Senior Trustee, on Form T-1, with respect to the 2005 Countrywide Indenture described above in Exhibit 4.34††           |
| 25.9                     | Intentionally omitted   |
| 25.10                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Senior Trustee, on Form T-1, with respect to the 2001 Countrywide Indenture described above in Exhibit 4.43††           |
| 25.11                    | Statement of Eligibility of Deutsche Bank Trust Company Americas, as Subordinated Trustee, on Form T-1, with respect to the 2006 Countrywide Indenture described above in Exhibit 4.48††                |
| 25.12                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the Amended and Restated Senior Indenture described above in Exhibit 4.52 ††      |
| 25.13                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the Amended and Restated Subordinated Indenture described above in Exhibit 4.54†† |
| 25.14                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.56†  |
| 25.15                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.57†  |
| 25.16                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the 2001 Company Restated Indenture described above in Exhibit 4.82††             |
| 25.17                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.173††                                  |
| 25.18-<br>25.32          | Intentionally omitted   |
| 25.33                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust VI††                      |
| 25.34                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust VII††                     |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 25.35                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust VIII††   |
| 25.36                    | Intentionally omitted.   |
| 25.37                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XI††   |
| 25.38                    | Intentionally omitted  |
| 25.39                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XIII††   |
| 25.40                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XIV ††   |
| 25.41                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XV††   |
| 25.42                    | Intentionally omitted  |
| 25.43                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of NB Capital Trust III ††  |
| 25.44-<br>25.49          | Intentionally omitted  |
| 25.50                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust VI ††                     |
| 25.51                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust VII ††                    |
| 25.52                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust VIII ††                   |
| 25.53                    | Intentionally omitted  |
| 25.54                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XI ††                     |
| 25.55                    | Intentionally omitted  |
| 25.56                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the HITS Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XIII††                                  |
| 25.57                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the HITS Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XIV††                                   |
| 25.58                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XV †† |
| 25.59                    | Intentionally omitted  |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 25.60                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of NB Capital Trust III ††  |
| 25.61                    | Intentionally omitted  |
| 25.62                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 1983 ML Senior Indenture described in Exhibit 4.193††  |
| 25.63                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 1993 ML Senior Indenture described in Exhibit 4.199††  |
| 25.64                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 1996 ML Subordinated Indenture described in Exhibit 4.202††  |
| 25.65                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 2006 ML Junior Subordinated Indenture described in Exhibit 4.205††   |
| 25.66                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust III††  |
| 25.67                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust IV††   |
| 25.68                    | Statement of Eligibility of The Bank of New York Mellon as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust V††   |
| 25.69                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Trust Agreement of Merrill Lynch Capital Trust I††   |
| 25.70                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Trust Agreement of Merrill Lynch Capital Trust II††  |
| 25.71                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Trust Agreement of Merrill Lynch Capital Trust III††   |
| 25.72                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Trust Preferred Securities Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Preferred Capital Trust III†† |
| 25.73                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Trust Preferred Securities Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Preferred Capital Trust IV††  |
| 25.74                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Trust Preferred Securities Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Preferred Capital Trust V††   |
| 25.75                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Capital Trust I††  |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 25.76                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Capital Trust II††  |
| 25.77                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Capital Trust III†† |
| 25.78                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Affiliate Debenture Guarantee Agreement in connection with Merrill Lynch Preferred Funding III, L.P. ††       |
| 25.79                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Affiliate Debenture Guarantee Agreement in connection with Merrill Lynch Preferred Funding IV, L.P. ††        |
| 25.80                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Affiliate Debenture Guarantee Agreement in connection with Merrill Lynch Preferred Funding V, L.P. ††         |
| *                        | To be filed as an exhibit to a Current Report on Form 8-K at the time of a particular offering and incorporated herein by reference.  |
| ††                       | Previously filed.   |

### **Item 17. Undertakings.**

The undersigned Registrants hereby undertake:

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

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

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

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (i), (ii) and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by a Registrant pursuant to Section 13 or Section 15(d) of the

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Securities Exchange Act of 1934, as amended (the “Securities Exchange Act”), that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

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

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

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) each prospectus filed by a Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of this registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of this registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of a Registrant under the Securities Act to any purchaser in the initial distribution of the securities, in a primary offering of securities of an undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of an undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) any free writing prospectus relating to the offering prepared by or on behalf of a Registrant or used or referred to by an undersigned Registrant;

(iii) the portion of any other free writing prospectus relating to the offering containing material information about an undersigned Registrant or its securities provided by or on behalf of an undersigned Registrant; and

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(iv) any other communication that is an offer in the offering made by an undersigned Registrant to the purchaser.

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

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

Each undersigned Registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

BANK OF AMERICA CORPORATION

BY: /s/ Brian T. Moynihan

Name: Brian T. Moynihan

Title: Chief Executive Officer

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

| <u>Signature</u>                                  | <u>Title</u>  | <u>Date</u>       |
|---|---|-------------------|
| <u>/s/ Brian T. Moynihan</u><br>Brian T. Moynihan | Chief Executive Officer, Chairman and Director<br>(Principal Executive Officer) | February 24, 2015 |
| <u>*</u><br>Bruce R. Thompson                     | Chief Financial Officer<br>(Principal Financial Officer)                        | February 24, 2015 |
| <u>*</u><br>Neil A. Cotty                         | Chief Accounting Officer<br>(Principal Accounting Officer)                      | February 24, 2015 |
| <u>*</u><br>Sharon L. Allen                       | Director  | February 24, 2015 |
| <u>*</u><br>Susan S. Bies                         | Director  | February 24, 2015 |
| <u>*</u><br>Jack O. Bovender, Jr.                 | Director  | February 24, 2015 |
| <u>*</u><br>Frank P. Bramble, Sr.                 | Director  | February 24, 2015 |
| <u>*</u><br>Pierre J. P. de Weck                  | Director  | February 24, 2015 |
| <u>*</u><br>Arnold W. Donald                      | Director  | February 24, 2015 |
| <u>*</u><br>Charles K. Gifford                    | Director  | February 24, 2015 |



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| <u>Signature</u>                       | <u>Title</u> | <u>Date</u>       |
|--|--------------|-------------------|
| *<br>_____<br>Charles O. Holliday, Jr. | Director     | February 24, 2015 |
| *<br>_____<br>Linda P. Hudson          | Director     | February 24, 2015 |
| *<br>_____<br>Monica C. Lozano         | Director     | February 24, 2015 |
| *<br>_____<br>Thomas J. May            | Director     | February 24, 2015 |
| *<br>_____<br>Lionel L. Nowell, III    | Director     | February 24, 2015 |
| *<br>_____<br>Clayton S. Rose          | Director     | February 24, 2015 |
| *<br>_____<br>R. David Yost            | Director     | February 24, 2015 |

\*By: \_\_\_\_\_ /s/ Ross E. Jeffries, Jr.  
Ross E. Jeffries, Jr.  
*Attorney-in-Fact*



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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

BAC CAPITAL TRUST XI

By: \_\_\_\_\_ /s/ Angela C. Jones  
Angela C. Jones  
Regular Trustee

By: \_\_\_\_\_ /s/ Timothy L. Pratt  
Timothy L. Pratt  
Regular Trustee

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

BAC CAPITAL TRUST XIII

By: \_\_\_\_\_ /s/ Angela C. Jones  
Angela C. Jones  
Regular Trustee

By: \_\_\_\_\_ /s/ Timothy L. Pratt  
Timothy L. Pratt  
Regular Trustee

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

BAC CAPITAL TRUST XIV

By: \_\_\_\_\_ /s/ Angela C. Jones  
Angela C. Jones  
Regular Trustee

By: \_\_\_\_\_ /s/ Timothy L. Pratt  
Timothy L. Pratt  
Regular Trustee

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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

BAC CAPITAL TRUST XV

By: \_\_\_\_\_ /s/ Angela C. Jones  
Angela C. Jones  
*Regular Trustee*

By: \_\_\_\_\_ /s/ Timothy L. Pratt  
Timothy L. Pratt  
*Regular Trustee*

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

NB CAPITAL TRUST III

By: \_\_\_\_\_ /s/ Angela C. Jones  
Angela C. Jones  
*Regular Trustee*

By: \_\_\_\_\_ /s/ Timothy L. Pratt  
Timothy L. Pratt  
*Regular Trustee*

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

MERRILL LYNCH CAPITAL TRUST I

By: \_\_\_\_\_ /s/ Angela C. Jones  
Angela C. Jones  
*Administrative Trustee*

By: \_\_\_\_\_ /s/ Timothy L. Pratt  
Timothy L. Pratt  
*Administrative Trustee*

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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

MERRILL LYNCH CAPITAL TRUST II

By: \_\_\_\_\_  
/s/ Angela C. Jones  
Angela C. Jones  
*Administrative Trustee*

By: \_\_\_\_\_  
/s/ Timothy L. Pratt  
Timothy L. Pratt  
*Administrative Trustee*

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

MERRILL LYNCH CAPITAL TRUST III

By: \_\_\_\_\_  
/s/ Angela C. Jones  
Angela C. Jones  
*Administrative Trustee*

By: \_\_\_\_\_  
/s/ Timothy L. Pratt  
Timothy L. Pratt  
*Administrative Trustee*

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

MERRILL LYNCH PREFERRED FUNDING III, L.P.

By: BANK OF AMERICA CORPORATION  
*as General Partner*

By: \_\_\_\_\_  
/s/ Angela C. Jones  
Angela C. Jones  
*Managing Director*



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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

MERRILL LYNCH PREFERRED FUNDING V, L.P.

By: BANK OF AMERICA CORPORATION  
*as General Partner*

By: \_\_\_\_\_  
/s/ Angela C. Jones  
Angela C. Jones  
*Managing Director*

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, North Carolina, on February 24, 2015.

MERRILL LYNCH PREFERRED CAPITAL TRUST V

By: \_\_\_\_\_  
/s/ Angela C. Jones  
Angela C. Jones  
*Regular Trustee*

By: \_\_\_\_\_  
/s/ Timothy L. Pratt  
Timothy L. Pratt  
*Regular Trustee*

**Exhibit Index**

| <u>Exhibit Index</u> | <u>Description</u>   |
|----------------------|--|
| 1.1                  | Form of Underwriting Agreement for Debt Securities, incorporated herein by reference to Exhibit 1.1 of the Registration Statement on Form S-3 (No. 333-133852) of Bank of America Corporation (the “Company”)  |
| 1.2                  | Form of Underwriting Agreement for Preferred Stock, incorporated herein by reference to Exhibit 1.2 of the Company’s Registration Statement on Form S-3 (No. 333-133852)   |
| 1.3                  | Form of Underwriting Agreement for Common Stock, incorporated herein by reference to Exhibit 1.3 of the Company’s Registration Statement on Form S-3 (No. 333-133852)  |
| 1.4                  | Form of Underwriting Agreement for Depository Shares, incorporated herein by reference to Exhibit 1.4 of the Company’s Registration Statement on Form S-3 (No. 333-158663)   |
| 1.5                  | Form of Underwriting Agreement for Warrants and Units, incorporated herein by reference to Exhibit 1.4 of the Company’s Registration Statement on Form S-3 (No. 333-133852)  |
| 1.6                  | Form of Underwriting Agreement for Purchase Contracts*   |
| 1.7                  | Intentionally Omitted  |
| 1.8                  | Distribution Agreement dated as of April 10, 2008, between Bank of America Corporation, Banc of America Securities LLC, and Banc of America Investment Services, Inc., incorporated herein by reference to Exhibit 1.1 of the Company’s Current Report on Form 8-K (File No. 1-6523) filed April 15, 2008  |
| 1.9                  | Letter agreement dated January 2, 2009, between Bank of America Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and First Republic Securities Company, LLC, incorporated herein by reference to Exhibit 1.9 of the Company’s Registration Statement on Form S-3 (No. 333-158663)  |
| 1.10                 | Form of Supplement to Series L Distribution Agreement, between Bank of America Corporation, Banc of America Securities LLC, Banc of America Investment Services, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and First Republic Securities Company, LLC, incorporated herein by reference to Exhibit 1.10 of the Company’s Registration Statement on Form S-3 (No. 333-158663) |
| 1.11                 | Form of Second Supplement to Series L Distribution Agreement, between Bank of America Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated ††  |
| 1.12                 | Amended and Restated Selling Agent Agreement among Bank of America Corporation and the agents named therein, incorporated herein by reference to Exhibit 1.1 of the Company’s Current Report on Form 8-K (File No. 1-6523) filed July 16, 2014.  |
| 4.1                  | Amended and Restated Certificate of Incorporation of Bank of America Corporation, including Certificates of Designation and other descriptions of outstanding series of Preferred Stock  |
| 4.2                  | Amended and Restated Bylaws of Bank of America Corporation, incorporated herein by reference to Exhibit 3.1 of the Company’s Current Report on Form 8-K (File No. 1-6523) filed October 1, 2014  |
| 4.3                  | Indenture dated as of January 1, 1995 (for senior debt securities), between NationsBank Corporation and BankAmerica National Trust Company, as trustee (the “1995 Company Senior Indenture”), incorporated herein by reference to Exhibit 4.1 of the Company’s Registration Statement on Form S-3 (No. 33-57533)   |



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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.4                      | Successor Trustee Agreement effective December 15, 1995, between NationsBank Corporation and First Trust of New York, National Association (now U.S. Bank Trust National Association), as successor trustee to BankAmerica National Trust Company, incorporated herein by reference to Exhibit 4.2 of the Company's Registration Statement on Form S-3 (No. 333-07229)                     |
| 4.5                      | First Supplemental Indenture to the 1995 Company Senior Indenture, dated as of September 18, 1998, among NationsBank Corporation, NationsBank (DE) Corporation and U.S. Bank Trust National Association, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed November 18, 1998   |
| 4.6                      | Second Supplemental Indenture to the 1995 Company Senior Indenture, dated as of May 7, 2001, among Bank of America Corporation, U.S. Bank Trust National Association, as Prior Trustee, and The Bank of New York, as Successor Trustee, incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 14, 2001                  |
| 4.7                      | Third Supplemental Indenture to the 1995 Company Senior Indenture, dated as of July 28, 2004, between Bank of America Corporation (successor to NationsBank Corporation) and The Bank of New York (successor to U.S. Bank Trust National Association), incorporated herein by reference to Exhibit 4.2 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 27, 2004 |
| 4.8                      | Fourth Supplemental Indenture to the 1995 Company Senior Indenture, dated as of April 28, 2006, between Bank of America Corporation and The Bank of New York Trust Company, N.A. (successor to The Bank of New York), incorporated herein by reference to Exhibit 4.6 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.9                      | Agreement of Appointment and Acceptance dated as of December 29, 2006, between Bank of America Corporation and The Bank of New York Trust Company, N.A. (successor trustee to The Bank of New York), incorporated herein by reference to Exhibit 4(aaa) of the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2006                                 |
| 4.10                     | Fifth Supplemental Indenture to the 1995 Company Senior Indenture, dated as of December 1, 2008, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York), incorporated herein by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K (File No. 1-6523) filed December 5, 2008                         |
| 4.11                     | Sixth Supplemental Indenture to the 1995 Company Senior Indenture, dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A.(successor to The Bank of New York), incorporated herein by reference to Exhibit 4(ee) of the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010         |
| 4.12                     | Form of Senior Registered Note, incorporated herein by reference to Exhibit 4.7 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.13                     | Form of Global Senior Medium-Term Note, Series L††   |
| 4.14                     | Form of Master Global Senior Medium-Term Note, Series L††  |
| 4.15                     | Indenture dated as of January 1, 1995 (for subordinated debt securities), between NationsBank Corporation and The Bank of New York, as trustee (the "the 1995 Company Subordinated Indenture"), incorporated herein by reference to Exhibit 4.5 of the Company's Registration Statement on Form S-3 (No. 33-57533)   |

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| <u>Exhibit Index</u> | <u>Description</u>  |
|----------------------|---|
| 4.16                 | First Supplemental Indenture to the 1995 Company Subordinated Indenture, dated as of August 28, 1998, among NationsBank Corporation, NationsBank (DE) Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.8 of the Company's Current Report on Form 8-K (File No. 1-6523) filed November 18, 1998   |
| 4.17                 | Second Supplemental Indenture to the 1995 Company Subordinated Indenture, dated as of January 25, 2007, between Bank of America Corporation and The Bank of New York Trust Company, N.A., incorporated herein by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-4 (No. 333-141361)  |
| 4.18                 | Third Supplemental Indenture to the 1995 Company Subordinated Indenture, dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A.(successor to The Bank of New York), incorporated herein by reference to Exhibit 4(ff) of the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010  |
| 4.19                 | Form of Subordinated Registered Note, incorporated herein by reference to Exhibit 4.10 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.20                 | Form of Global Subordinated Medium-Term Note, Series L††  |
| 4.21                 | Indenture dated as of November 1, 1992, between NationsBank Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4.1 to the Company's Amendment No. 1 to Current Report on Form 8-K (File No. 1-6523) filed March 1, 1993  |
| 4.22                 | First Supplemental Indenture dated as of July 1, 1993, between NationsBank Corporation and The Bank of New York, as Trustee, to the Indenture dated as of November 1, 1992 between NationsBank Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K (File No. 1-6523) filed July 7, 1993   |
| 4.23                 | Second Supplemental Indenture dated as of August 28, 1998, among NationsBank Corporation, NationsBank (DE) Corporation and The Bank of New York, as Trustee, to the Indenture dated as of November 1, 1992 between NationsBank Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4(i) to the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 1998                          |
| 4.24                 | Indenture dated as of September 1, 1989 between NCNB Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (Registration No. 33-30717)  |
| 4.25                 | First Supplemental Indenture dated as of August 28, 1998, among NationsBank Corporation (successor to NCNB Corporation), NationsBank (DE) Corporation and The Bank of New York, as Trustee, to the Indenture dated as of September 1, 1989 between NCNB Corporation and The Bank of New York, as Trustee, incorporated herein by reference to Exhibit 4(f) to the Company's Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 1998 |
| 4.26-4.28            | Intentionally omitted   |
| 4.29                 | Indenture dated as of October 1, 1992, between Fleet Financial Group, Inc. and The First National Bank of Chicago, as Trustee, incorporated herein by reference to Exhibit 4(d) to the Registration Statement on Form S-3/A (No. 33-50216) of Fleet Financial Group, Inc.   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.30                     | First Supplemental Indenture dated as of November 30, 1992, between Fleet Financial Group, Inc. and The First National Bank of Chicago, as Trustee, incorporated herein by reference to Exhibit 4 to Fleet Financial Group, Inc.'s Current Report on Form 8-K (File No. 1-06366) filed December 2, 1992  |
| 4.31                     | Second Supplemental Indenture dated as of March 18, 2004, among Bank of America, FleetBoston Financial Corporation (successor to Fleet Financial Group, Inc.), and J.P. Morgan Trust Company, N.A. (successor to The First National Bank of Chicago), as Trustee, incorporated herein by reference to Exhibit 4.59 to Bank of America's Amendment No. 1 to Registration Statement on Form S-3 (No. 333-112708)   |
| 4.32                     | Indenture dated as of September 29, 1992, between MBNA Corporation and Bankers Trust Company, as Trustee, incorporated herein by reference to Exhibit 4(a) to the Registration Statement on Form S-3 (No. 33-95600) of MBNA Corporation  |
| 4.33                     | First Supplemental Indenture dated as of December 21, 2005, among Bank of America Corporation, MBNA Corporation and Deutsche Bank Trust Company Americas (successor to Bankers Trust Company), as Trustee, incorporated herein by reference to Exhibit 4.32 to the Company's Registration Statement on Form S-3 (No. 333-130821)   |
| 4.34                     | Indenture dated as of February 1, 2005, among Countrywide Financial Corporation, Countrywide Home Loans, Inc. and The Bank of New York, as Trustee (the "2005 Countrywide Indenture"), incorporated herein by reference to Exhibit 4.58 of Countrywide Financial Corporation's Quarterly Report on Form 10-Q (File No. 1-12331-01) for the quarter ended March 31, 2006  |
| 4.35                     | First Supplemental Indenture dated as of July 1, 2008, among Red Oak Merger Corporation, Countrywide Financial Corporation, Countrywide Home Loans, Inc., and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2005 Countrywide Indenture, incorporated herein by reference to Exhibit 4.2 of Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed July 8, 2008                                |
| 4.36                     | Second Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation), Countrywide Home Loans, Inc. and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2005 Countrywide Indenture, incorporated herein by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008 |
| 4.37                     | Third Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Home Loans, Inc. and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2005 Countrywide Indenture, incorporated herein by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008  |
| 4.38-<br>4.42            | Intentionally omitted  |
| 4.43                     | Indenture dated as of December 1, 2001, among Countrywide Home Loans, Inc., Countrywide Financial Corporation (formerly known as Countrywide Credit Industries, Inc.) and The Bank of New York, as Trustee (the "2001 Countrywide Indenture"), incorporated herein by reference to Exhibit 4.25 to Countrywide Financial Corporation's Annual Report on Form 10-K (File No. 1-12331-01) for the year ended December 31, 2003   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.44                     | First Supplemental Indenture dated as of July 1, 2008, among Red Oak Merger Corporation, Countrywide Home Loans, Inc., Countrywide Financial Corporation (formerly known as Countrywide Credit Industries, Inc.) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2001 Countrywide Indenture, incorporated herein by reference to Exhibit 4.4 of Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed July 8, 2008   |
| 4.45                     | Second Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Home Loans, Inc., Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2001 Countrywide Indenture, incorporated herein by reference to Exhibit 4.15 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008  |
| 4.46                     | Third Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2001 Countrywide Indenture, incorporated herein by reference to Exhibit 4.16 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008   |
| 4.47                     | Agreement of Resignation, Appointment and Acceptance dated as of December 10, 2008, among Bank of America Corporation, The Bank of New York Mellon (formerly The Bank of New York) and The Bank of New York Mellon Trust Company, N.A., incorporated herein by reference to Exhibit 4.76 of the Company's Post-Effective Amendment No.1 to the Registration Statement on Form S-3 (No. 333-158663)   |
| 4.48                     | Indenture dated as of May 16, 2006, between Countrywide Financial Corporation and The Bank of New York, as Trustee (the "2006 Countrywide Indenture"), relating to the 6.25% Subordinated Notes due May 15, 2016, incorporated herein by reference to Exhibit 4.27 to Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed May 16, 2006  |
| 4.49                     | First Supplemental Indenture dated as of July 1, 2008, among Red Oak Merger Corporation, Countrywide Financial Corporation and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2006 Countrywide Indenture, incorporated herein by reference to Exhibit 4.1 of Countrywide Financial Corporation's Current Report on Form 8-K (File No. 1-12331-01) filed July 8, 2008   |
| 4.50                     | Second Supplemental Indenture dated as of November 7, 2008, among Bank of America Corporation, Countrywide Financial Corporation (formerly known as Red Oak Merger Corporation) and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee, to the 2006 Countrywide Indenture, incorporated herein by reference to Exhibit 4.7 to the Company's Current Report on Form 8-K (File No. 1-6523) filed November 10, 2008   |
| 4.51                     | Agreement of Resignation, Appointment and Acceptance, dated as of January 1, 2009, among Bank of America Corporation (successor in interest to Countrywide Financial Corporation), as issuer; the Bank of New York Mellon, as the resigning trustee, and Deutsche Bank Trust Company Americas, as successor trustee, relating to the 2006 Countrywide Indenture, incorporated herein by reference to Exhibit 4.172 of the Company's Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (Registration Statement No. 333-158663) |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.52                     | Amended and Restated Senior Indenture dated as of July 1, 2001 (for senior Internotes) between Bank of America Corporation and The Bank of New York, as trustee (the “Amended and Restated Senior Indenture”), incorporated herein by reference to Exhibit 4.1 to the Company’s Registration Statement on Form S-3 (No. 333-65750)   |
| 4.53                     | First Supplemental Indenture dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York), supplementing the Amended and Restated Senior Indenture, incorporated herein by reference to Exhibit 4(gg) of the Company’s Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010       |
| 4.54                     | Amended and Restated Subordinated Indenture dated as of July 1, 2001 (for subordinated Internotes) between Bank of America Corporation and The Bank of New York, as trustee (the “Amended and Restated Subordinated Indenture”), incorporated herein by reference to Exhibit 4.2 to the Company’s Registration Statement on Form S-3 (No. 333-65750)   |
| 4.55                     | First Supplemental Indenture dated as of February 23, 2011, between Bank of America Corporation and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York), supplementing the Amended and Restated Subordinated Indenture, incorporated herein by reference to Exhibit 4(hh) of the Company’s Annual Report on Form 10-K (File No. 1-6523) for the year ended December 31, 2010 |
| 4.56                     | Restated Senior Indenture dated as of January 1, 2001 between Bank of America Corporation and The Bank of New York, as trustee, incorporated herein by reference to Exhibit 4.1 of the Company’s Amendment No. 1 to Registration Statement on Form S-3 (No. 333-47222)   |
| 4.57                     | Restated Subordinated Indenture dated as of January 1, 2001 between Bank of America Corporation and The Bank of New York, as trustee, incorporated herein by reference to Exhibit 4.2 of the Company’s Amendment No. 1 to Registration Statement on Form S-3 (No. 333-47222)   |
| 4.58                     | Form of Certificate for Preferred Stock, incorporated herein by reference to Exhibit 4.14 of the Company’s Registration Statement on Form S-3 (No. 333-112708)   |
| 4.59                     | Specimen Common Stock Certificate, incorporated herein by reference to Exhibit 4.15 of the Company’s Registration Statement on Form S-3 (No. 333-112708)   |
| 4.60                     | Form of Deposit Agreement, incorporated herein by reference to Exhibit 4.20 of the Company’s Registration Statement on Form S-3 (No. 333-158663)   |
| 4.61                     | Form of Depositary Receipt (included in Exhibit 4.60)  |
| 4.62                     | Form of Warrant Agreement for Universal Warrant*   |
| 4.63                     | Form of Warrant Agreement for Warrants Sold Alone*   |
| 4.64                     | Form of Warrant Agreement for Warrants Sold Attached to Debt Securities*   |
| 4.65                     | Form of Prepaid Unit Agreement, including form of prepaid unit certificate*  |
| 4.66                     | Form of Non-Prepaid Unit Agreement*  |
| 4.67                     | Form of Put Warrant (included in Exhibit 4.63)   |
| 4.68                     | Form of Call Warrant (included in Exhibit 4.63)  |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.69                     | Form of Prepaid Purchase Contract*  |
| 4.70                     | Form of Non-Prepaid Purchase Contract*  |
| 4.71-<br>4.81            | Intentionally omitted   |
| 4.82                     | Restated Indenture dated as of November 1, 2001 (for junior subordinated debt securities) between Bank of America Corporation and The Bank of New York, as Trustee (the "2001 Company Restated Indenture"), incorporated herein by reference to Exhibit 4.10 of Amendment No. 1 to the Company's Registration Statement on Form S-3 (No. 333-70984) |
| 4.83-<br>4.91            | Intentionally omitted   |
| 4.92                     | Certificate of Trust of BAC Capital Trust VI, incorporated herein by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-3 (No. 333-104151)  |
| 4.93                     | Certificate of Trust of BAC Capital Trust VII, incorporated herein by reference to Exhibit 4.4 of the Company's Registration Statement on Form S-3 (No. 333-104151)   |
| 4.94                     | Certificate of Trust of BAC Capital Trust VIII, incorporated herein by reference to Exhibit 4.2 of the Company's Registration Statement on Form S-3 (No. 333-123714)  |
| 4.95                     | Intentionally omitted   |
| 4.96                     | Certificate of Trust of BAC Capital Trust XI, incorporated herein by reference to Exhibit 4.5 of the Company's Registration Statement on Form S-3 (No. 333-123714)  |
| 4.97                     | Intentionally omitted   |
| 4.98                     | Certificate of Trust of BAC Capital Trust XIII, incorporated herein by reference to Exhibit 4.25 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.99                     | Certificate of Trust of BAC Capital Trust XIV, incorporated herein by reference to Exhibit 4.26 of the Company's Registration Statement on Form S-3 (No. 333-133852)  |
| 4.100                    | Certificate of Trust of BAC Capital Trust XV, incorporated herein by reference to Exhibit 4.27 of the Company's Registration Statement on Form S-3 (No. 333-133852)   |
| 4.101                    | Intentionally omitted   |
| 4.102                    | Certificate of Trust of NB Capital Trust III, incorporated herein by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-3 (No. 333-15375)   |
| 4.103-<br>4.108          | Intentionally omitted   |
| 4.109                    | Amended and Restated Declaration of Trust of BAC Capital Trust VI dated as of February 24, 2005 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed March 9, 2005   |
| 4.110                    | Amended and Restated Declaration of Trust of BAC Capital Trust VII dated as of August 4, 2005 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 11, 2005   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.111                    | Amended and Restated Declaration of Trust of BAC Capital Trust VIII dated as of August 17, 2005 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 26, 2005     |
| 4.112                    | Intentionally omitted   |
| 4.113                    | Amended and Restated Declaration of Trust of BAC Capital Trust XI dated as of May 15, 2006 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed May 23, 2006             |
| 4.114                    | Intentionally omitted   |
| 4.115                    | Amended and Restated Declaration of Trust of BAC Capital Trust XIII dated as of February 16, 2007 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 16, 2007 |
| 4.116                    | Amended and Restated Declaration of Trust of BAC Capital Trust XIV dated as of February 16, 2007 (including form of capital security), incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 16, 2007  |
| 4.117                    | Amended and Restated Declaration of Trust of BAC Capital Trust XV dated May 23, 2007 (including form of capital security), incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 1, 2007                   |
| 4.118                    | Intentionally omitted   |
| 4.119                    | Amended and Restated Declaration of Trust of NB Capital Trust III dated January 22, 1997 (including form of capital security), incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 3, 1997           |
| 4.120-<br>4.130          | Intentionally omitted   |
| 4.131                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust VI, dated as of November 7, 2011††  |
| 4.132                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust VI, dated as of November 10, 2011††   |
| 4.133                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust VII, dated as of November 7, 2011††   |
| 4.134                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust VII, dated as of November 10, 2011††  |
| 4.135                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust VIII, dated as of November 7, 2011††  |
| 4.136                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust VIII, dated as of November 10, 2011††   |
| 4.137-<br>4.138          | Intentionally omitted   |
| 4.139                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XI, dated as of November 7, 2011††  |
| 4.140                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XI, dated as of November 10, 2011††   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.141-<br>4.142          | Intentionally omitted   |
| 4.143                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIII, dated as of December 8, 2011††  |
| 4.144                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIII, dated as of January 12, 2012††  |
| 4.145                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIV, dated as of December 8, 2011††   |
| 4.146                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XIV, dated as of January 12, 2012††   |
| 4.147                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of BAC Capital Trust XV, dated as of November 7, 2011††  |
| 4.148                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of BAC Capital Trust XV, dated as of November 10, 2011††   |
| 4.149-<br>4.150          | Intentionally omitted   |
| 4.151                    | Amendment No. 1 to the Amended and Restated Declaration of Trust of NB Capital Trust III, dated as of November 7, 2011††  |
| 4.152                    | Amendment No. 2 to the Amended and Restated Declaration of Trust of NB Capital Trust III, dated as of November 10, 2011††   |
| 4.153-<br>4.159          | Intentionally omitted   |
| 4.160                    | Sixth Supplemental Indenture dated as of March 8, 2005 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed March 9, 2005       |
| 4.161                    | Seventh Supplemental Indenture dated as of August 10, 2005 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 11, 2005 |
| 4.162                    | Eighth Supplemental Indenture dated as of August 25, 2005 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 26, 2005  |
| 4.163                    | Intentionally omitted   |
| 4.164                    | Eleventh Supplemental Indenture dated as of May 23, 2006 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York, as Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed May 23, 2006      |



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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.165-<br>4.167          | Intentionally omitted   |
| 4.168                    | Fifteenth Supplemental Indenture dated as of May 31, 2007 (including form of junior subordinated note) between Bank of America Corporation and The Bank of New York Trust Company, N.A., as successor Trustee, to the 2001 Company Restated Indenture, incorporated herein by reference to Exhibit 4.4 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 1, 2007 |
| 4.169-<br>4.172          | Intentionally omitted   |
| 4.173                    | Indenture dated as of November 27, 1996 between NationsBank Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.10 of the Company's Amendment No. 2 to Registration Statement on Form S-3 (Registration No. 333-15375)  |
| 4.174                    | Intentionally omitted   |
| 4.175                    | Third Supplemental Indenture dated as of February 3, 1997 (including form of junior subordinated note) between NationsBank Corporation and The Bank of New York, incorporated herein by reference to Exhibit 4.3 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 3, 1997   |
| 4.176-<br>4.181          | Intentionally omitted   |
| 4.182                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust VI, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed March 9, 2005  |
| 4.183                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust VII, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 11, 2005   |
| 4.184                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust VIII, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed August 26, 2005  |
| 4.185                    | Intentionally omitted   |
| 4.186                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust XI, incorporated herein by reference to Exhibit 4.5 of the Company's Current Report on Form 8-K (File No. 1-6523) filed May 23, 2006   |
| 4.187                    | Intentionally omitted   |
| 4.188                    | HITS Guarantee Agreement with respect to BAC Capital Trust XIII, incorporated herein by reference to Exhibit 4.12 of the Company's Current Report on Form 8-K (File No. 1-6523) filed February 15, 2007   |
| 4.189                    | HITS Guarantee Agreement with respect to BAC Capital Trust XIV, incorporated herein by reference to Exhibit 4.13 of the Company's Current Report on Form 8-K File (No. 1-6523) filed February 15, 2007  |
| 4.190                    | Capital Securities Guarantee Agreement with respect to BAC Capital Trust XV, incorporated herein by reference to Exhibit 4.6 of the Company's Current Report on Form 8-K (File No. 1-6523) filed June 1, 2007   |
| 4.191                    | Intentionally omitted   |
| 4.192                    | Form of Guarantee Agreement with respect to NB Capital Trust III, incorporated herein by reference to Exhibit 4.12 of the Company's Registration Statement on Form S-3 (Registration No. 333-18273)   |

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| <u>Exhibit Index</u> | <u>Description</u>   |
|----------------------|--|
| 4.193                | Senior Indenture, dated as of April 1, 1983, as amended and restated as of April 1, 1987, between Merrill Lynch & Co., Inc. (“Merrill Lynch”) and The Bank of New York Mellon, <sup>1</sup> as Trustee (the “1983 ML Senior Indenture”), and the Supplemental Indenture thereto dated as of March 15, 1990, incorporated by reference to Exhibit 4(i) to Merrill Lynch’s Annual Report on Form 10-K (File No. 1-7182) for the fiscal year ended December 31, 1999 (the “1999 ML 10-K”) |
| 4.194                | Sixth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of October 25, 1993, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(ii) to the 1999 ML 10-K  |
| 4.195                | Twelfth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of September 1, 1998, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(a) to Merrill Lynch’s Current Report on Form 8-K (File No 1-7182) filed October 21, 1998  |
| 4.196                | Fifteenth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of October 14, 2003, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b)(ix) to Merrill Lynch’s Registration Statement on Form 5-3 (No. 333-109802)  |
| 4.197                | Eighteenth Supplemental Indenture to the 1983 ML Senior Indenture, dated as of October 21, 2004, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b)(xiv) to Merrill Lynch’s Registration Statement on Form 5-3 (No. 333122639)   |
| 4.198                | Twentieth Supplemental Indenture to the 1983 ML Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |
| 4.199                | Senior Indenture, dated as of October 1, 1993, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon (the “1993 ML Senior Indenture”), incorporated by reference to Exhibit 4(iv) to Merrill Lynch’s Annual Report on Form 10-K (File No. 1-7182) for the fiscal year ended December 25, 1998  |
| 4.200                | First Supplemental Indenture to the 1993 ML Senior Indenture, dated as of June 1, 1998, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(a) to Merrill Lynch’s Current Report on Form 8-K (File No. 1-7182) filed July 2, 1998  |
| 4.201                | Second Supplemental Indenture to the 1993 ML Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††   |
| 4.202                | Form of Subordinated Indenture, dated as of December 17, 1996, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as Trustee (the “1996 ML Subordinated Indenture”), incorporated by reference to Exhibit 4.7 to Amendment No. 2 to Merrill Lynch’s Registration Statement on Form S-3 (No 333-16603)  |

<sup>1</sup> As used in this section of this Registration Statement, “The Bank of New York Mellon” means The Bank of New York Mellon, a New York banking corporation and successor to the corporate trust business of The Bank of New York, JPMorgan Chase Bank, N.A., the entity formerly known as JPMorgan Chase Bank, The Chase Manhattan Bank and Chemical Bank (successor by merger to Manufacturers Hanover Trust Company).

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 4.203                    | Supplemental Indenture to the 1996 ML Subordinated Indenture, dated as of May 16, 2006, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as trustee, incorporated by reference to Exhibit 4(a) to Merrill Lynch's Current Report on Form 8-K (File No 1-7182) filed May 16, 2006   |
| 4.204                    | Second Supplemental Indenture to the 1996 ML Subordinated Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |
| 4.205                    | Junior Subordinated Indenture, dated as of December 14, 2006, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as trustee (the "2006 ML Junior Subordinated Indenture), incorporated by reference to Exhibit 4(a) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006  |
| 4.206                    | First Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of December 14, 2006, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006   |
| 4.207                    | Second Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of May 2, 2007, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed May 2, 2007  |
| 4.208                    | Third Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of August 22, 2007, between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, incorporated by reference to Exhibit 4(b) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed August 22, 2007   |
| 4.209                    | Fourth Supplemental Indenture to the 2006 ML Junior Subordinated Indenture, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††   |
| 4.210                    | Form of Certificate of Trust of Merrill Lynch Preferred Capital Trust III, Merrill Lynch Preferred Capital Trust IV, and Merrill Lynch Preferred Capital Trust V, incorporated by reference to Exhibit 4.1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-42859)   |
| 4.211                    | Form of Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust III, Merrill Lynch Preferred Capital Trust IV and Merrill Lynch Preferred Capital Trust V (including form of trust preferred security), incorporated by reference to Exhibit 4.2 to Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-42859) |
| 4.212                    | Form of Certificate of Limited Partnership of Merrill Lynch Preferred Funding III, L.P., Merrill Lynch Preferred Funding IV, L.P. and Merrill Lynch Preferred Funding V, L.P., incorporated by reference to Exhibit 4.3 to Merrill Lynch's Registration Statement on Form S-3 (No 333-42859)   |
| 4.213                    | Amendment to the Certificate of Limited Partnership of Merrill Lynch Preferred Funding III, L.P., dated as of September 30, 2013†  |
| 4.214                    | Amendment to the Certificate of Limited Partnership of Merrill Lynch Preferred Funding IV, L.P., dated as of September 30, 2013†   |
| 4.215                    | Amendment to the Certificate of Limited Partnership of Merrill Lynch Preferred Funding V, L.P., dated as of September 30, 2013†  |

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| <u>Exhibit Index</u> | <u>Description</u>  |
|----------------------|---|
| 4.216                | Form of Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding III, L.P., Merrill Lynch Preferred Funding IV, L.P. and Merrill Lynch Preferred Funding V L.P. (including form of partnership preferred security), incorporated by reference to Exhibit 4.4 to Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-42859) |
| 4.217                | Trust Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Preferred Capital Trust III††  |
| 4.218                | Trust Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Preferred Capital Trust IV††   |
| 4.219                | Trust Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Preferred Capital Trust V††  |
| 4.220                | Partnership Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and Merrill Lynch Preferred Funding III, L.P. ††  |
| 4.221                | Partnership Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and Merrill Lynch Preferred Funding IV, L.P. ††   |
| 4.222                | Partnership Preferred Securities Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and Merrill Lynch Preferred Funding V, L.P. ††  |
| 4.223                | Affiliate Debenture Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, in connection with Merrill Lynch Preferred Funding III, L.P. ††   |
| 4.224                | Affiliate Debenture Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trustee, in connection with Merrill Lynch Preferred Funding IV, L.P. ††  |
| 4.225                | Affiliate Debenture Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation and The Bank of New York Mellon, as guarantee trust, in connection with Merrill Lynch Preferred Funding V, L.P. ††   |
| 4.226                | Certificate of Trust of Merrill Lynch Capital Trust I, incorporated by reference to Exhibit 4(b) to Post-Effective Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)   |
| 4.227                | Trust Agreement of Merrill Lynch Capital Trust I, incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 1 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)  |
| 4.228                | Amended and Restated Trust Agreement of Merrill Lynch Capital Trust I (including form of trust preferred security), incorporated by reference to Exhibit 4(e) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006   |
| 4.229                | Guarantee Agreement between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Capital Trust I, incorporated by reference to Exhibit 4(f) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed December 14, 2006   |
| 4.230                | First Amendment to Merrill Lynch Capital Trust I Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |

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| <u>Exhibit Index</u> | <u>Description</u>  |
|----------------------|---|
| 4.231                | Certificate of Trust of Merrill Lynch Capital Trust II, incorporated by reference to Exhibit 4(b) to Post-Effective Amendment No. 2 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)  |
| 4.232                | Trust Agreement of Merrill Lynch Capital Trust II, incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 2 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)   |
| 4.233                | Amended and Restated Trust Agreement of Merrill Lynch Capital Trust II, including form of Trust Preferred Security, incorporated by reference to Exhibit 4(e) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed May 2, 2007   |
| 4.234                | Guarantee Agreement between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Capital Trust II, incorporated by reference to Exhibit 4(f) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed May 2, 2007                  |
| 4.235                | First Amendment to Merrill Lynch Capital Trust II Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††   |
| 4.236                | Certificate of Trust of Merrill Lynch Capital Trust III, incorporated by reference to Exhibit 4(b) to Post-Effective Amendment No. 3 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)   |
| 4.237                | Trust Agreement of Merrill Lynch Capital Trust III, incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 3 to Merrill Lynch's Registration Statement on Form S-3 (No. 333-132911)  |
| 4.238                | Amended and Restated Trust Agreement of Merrill Lynch Capital Trust III, including form of Trust Preferred Security, incorporated by reference to Exhibit 4(e) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed August 22, 2007  |
| 4.239                | Guarantee Agreement between Merrill Lynch & Co., Inc. and The Bank of New York Mellon, as guarantee trustee, with respect to Merrill Lynch Capital Trust III, incorporated by reference to Exhibit 4(f) to Merrill Lynch's Current Report on Form 8-K (File No. 1-7182) filed August 22, 2007             |
| 4.240                | First Amendment to Merrill Lynch Capital Trust III Guarantee Agreement, dated as of September 30, 2013, among Bank of America Corporation, Merrill Lynch & Co., Inc. and The Bank of New York Mellon††  |
| 4.241                | Bank of America Corporation Senior InterNotes® Master Registered Global Senior Note, incorporated herein by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K (File No. 1-6523) filed July 16, 2014  |
| 4.242                | Bank of America Corporation Subordinated InterNotes® Master Registered Global Subordinated Note, incorporated herein by reference to Exhibit 4.2 of the Company's Current Report on Form 8-K (File No. 1-6523) filed July 16, 2014  |
| 4.243                | Amendment to Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding III, L.P. ("Partnership III"), dated as of March 7, 2014, incorporated herein by reference to Exhibit 99.2 to Partnership III's Current Report on Form 8-K (File No. 1-7182-05) filed March 7, 2014 |
| 4.244                | Amendment to Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding IV, L.P. ("Partnership IV"), dated as of March 7, 2014, incorporated herein by reference to Exhibit 99.2 to Partnership IV's Current Report on Form 8-K (File No. 1-7182-07) filed March 7, 2014    |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 4.245                    | Amendment to Amended and Restated Agreement of Limited Partnership of Merrill Lynch Preferred Funding V, L.P. (“Partnership V”), dated as of March 7, 2014, incorporated herein by reference to Exhibit 99.2 to Partnership V’s Current Report on Form 8-K (File No. 1-7182-09) filed March 7, 2014 |
| 5.1                      | Opinion of McGuireWoods LLP, regarding legality of securities being registered  |
| 5.2                      | Opinion of Richards, Layton & Finger, P.A. as to Bank of America Corporation capital trusts†  |
| 5.3                      | Opinion of McGuireWoods LLP regarding legality of securities issued by a predecessor company††  |
| 5.4                      | Opinion of Richards, Layton & Finger, P.A., as to Merrill Lynch capital trusts and limited partnerships††   |
| 5.5                      | Opinion of McGuireWoods LLP, regarding legality of InterNotes®  |
| 8.1                      | Opinion of Morrison & Foerster LLP, regarding certain tax matters   |
| 8.2                      | Opinion of Morrison & Foerster LLP, regarding certain tax matters related to InterNotes®  |
| 12.1                     | Calculation of Ratio of Earnings to Fixed Charges, and Ratio of Earnings to Fixed Charges and Preferred Dividends, incorporated herein by reference to Exhibit 12 of the Company’s Quarterly Report on Form 10-Q (File No. 1-6523) for the quarter ended September 30, 2014                         |
| 23.1                     | Consent of McGuireWoods LLP (included in Exhibit 5.1)   |
| 23.2                     | Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.2)  |
| 23.3                     | Consent of Morrison & Foerster LLP (included in Exhibit 8.1)  |
| 23.4                     | Consent of PricewaterhouseCoopers LLP   |
| 23.5-<br>23.7            | Intentionally omitted   |
| 23.8                     | Consent of McGuireWoods LLP (included in Exhibit 5.3)   |
| 23.9                     | Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.4)  |
| 23.10                    | Consent of McGuireWoods LLP (included in Exhibit 5.5)   |
| 23.11                    | Consent of Morrison & Foerster LLP (included in Exhibit 8.2)  |
| 24.1                     | Power of Attorney   |
| 25.1                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Senior Trustee, on Form T-1, with respect to the 1995 Company Senior Indenture described above in Exhibit 4.3††   |
| 25.2                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the 1995 Company Subordinated Indenture described above in Exhibit 4.15††  |
| 25.3                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.21††  |
| 25.4                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.24††  |
| 25.5                     | Intentionally omitted   |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 25.6                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Subordinated Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.29 ††                     |
| 25.7                     | Statement of Eligibility of Deutsche Bank Trust Company Americas, as Senior Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.32 ††                                      |
| 25.8                     | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Senior Trustee, on Form T-1, with respect to the 2005 Countrywide Indenture described above in Exhibit 4.34††           |
| 25.9                     | Intentionally omitted   |
| 25.10                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Senior Trustee, on Form T-1, with respect to the 2001 Countrywide Indenture described above in Exhibit 4.43††           |
| 25.11                    | Statement of Eligibility of Deutsche Bank Trust Company Americas, as Subordinated Trustee, on Form T-1, with respect to the 2006 Countrywide Indenture described above in Exhibit 4.48††                |
| 25.12                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the Amended and Restated Senior Indenture described above in Exhibit 4.52 ††      |
| 25.13                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the Amended and Restated Subordinated Indenture described above in Exhibit 4.54†† |
| 25.14                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.56†  |
| 25.15                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.57†  |
| 25.16                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the 2001 Company Restated Indenture described above in Exhibit 4.82††             |
| 25.17                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Trustee, on Form T-1, with respect to the Indenture described above in Exhibit 4.173††                                  |
| 25.18-<br>25.32          | Intentionally omitted   |
| 25.33                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust VI††                      |
| 25.34                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust VII††                     |
| 25.35                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust VIII††                    |
| 25.36                    | Intentionally omitted.  |
| 25.37                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XI††                      |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 25.38                    | Intentionally omitted  |
| 25.39                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XIII††   |
| 25.40                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XIV ††   |
| 25.41                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of BAC Capital Trust XV††   |
| 25.42                    | Intentionally omitted  |
| 25.43                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of NB Capital Trust III ††  |
| 25.44-<br>25.49          | Intentionally omitted  |
| 25.50                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust VI ††                     |
| 25.51                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust VII ††                    |
| 25.52                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust VIII ††                   |
| 25.53                    | Intentionally omitted  |
| 25.54                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XI ††                     |
| 25.55                    | Intentionally omitted  |
| 25.56                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the HITS Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XIII††                                  |
| 25.57                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the HITS Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XIV††                                   |
| 25.58                    | Statement of Eligibility of The Bank of New York Mellon Trust Company, N.A., as Guarantee Trustee, on Form T-1, with respect to the Capital Securities Guarantee Agreement for the benefit of the holders of capital securities of BAC Capital Trust XV †† |
| 25.59                    | Intentionally omitted  |
| 25.60                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of NB Capital Trust III ††  |
| 25.61                    | Intentionally omitted  |



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| <u>Exhibit<br/>Index</u> | <u>Description</u>   |
|--------------------------|--|
| 25.62                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 1983 ML Senior Indenture described in Exhibit 4.193 <sup>††</sup>  |
| 25.63                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 1993 ML Senior Indenture described in Exhibit 4.199 <sup>††</sup>  |
| 25.64                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 1996 ML Subordinated Indenture described in Exhibit 4.202 <sup>††</sup>  |
| 25.65                    | Statement of Eligibility of The Bank of New York Mellon, as Trustee, on Form T-1, with respect to the 2006 ML Junior Subordinated Indenture described in Exhibit 4.205 <sup>††</sup>   |
| 25.66                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust III <sup>††</sup>  |
| 25.67                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust IV <sup>††</sup>   |
| 25.68                    | Statement of Eligibility of The Bank of New York Mellon as Property Trustee, on Form T-1, with respect to the Amended and Restated Declaration of Trust of Merrill Lynch Preferred Capital Trust V <sup>††</sup>   |
| 25.69                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Trust Agreement of Merrill Lynch Capital Trust I <sup>††</sup>   |
| 25.70                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Trust Agreement of Merrill Lynch Capital Trust II <sup>††</sup>  |
| 25.71                    | Statement of Eligibility of The Bank of New York Mellon, as Property Trustee, on Form T-1, with respect to the Amended and Restated Trust Agreement of Merrill Lynch Capital Trust III <sup>††</sup>   |
| 25.72                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Trust Preferred Securities Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Preferred Capital Trust III <sup>††</sup> |
| 25.73                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Trust Preferred Securities Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Preferred Capital Trust IV <sup>††</sup>  |
| 25.74                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Trust Preferred Securities Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Preferred Capital Trust V <sup>††</sup>   |
| 25.75                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Capital Trust I <sup>††</sup>  |
| 25.76                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Capital Trust II <sup>††</sup>                                       |
| 25.77                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Guarantee Agreement for the benefit of the holders of capital securities of Merrill Lynch Capital Trust III <sup>††</sup>                                      |

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| <u>Exhibit<br/>Index</u> | <u>Description</u>  |
|--------------------------|---|
| 25.78                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Affiliate Debenture Guarantee Agreement in connection with Merrill Lynch Preferred Funding III, L.P. †† |
| 25.79                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Affiliate Debenture Guarantee Agreement in connection with Merrill Lynch Preferred Funding IV, L.P. ††  |
| 25.80                    | Statement of Eligibility of The Bank of New York Mellon, as Guarantee Trustee, on Form T-1, with respect to the Affiliate Debenture Guarantee Agreement in connection with Merrill Lynch Preferred Funding V, L.P. ††   |

\* To be filed as an exhibit to a Current Report on Form 8-K at the time of a particular offering and incorporated herein by reference.

†† Previously filed.

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 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 Redemption Price, provided that: (i) full cumulative dividends have been paid or declared and set apart for payment upon all shares of any series of preferred stock ranking superior to the Series B Preferred Stock as to dividends or other distributions (collectively the "Superior Stock"); and (ii) the Corporation is not then in default or in arrears with respect to any sinking or analogous fund or call for tenders obligation or agreement for the purchase, redemption or retirement of any shares of Superior Stock. In the event that, upon receipt of a request for redemption, either or both of the conditions set forth in clauses (i) and (ii) above are not met, the Corporation shall forthwith return said request to the submitting shareholder along with a statement that the Corporation is unable to honor such request and explanation of the reasons therefor. From and after the receipt by the Corporation of a request for redemption from any holder of said Series B Preferred Stock, which request may be honored consistent with the foregoing provisions, all rights of such holder in the Series B Preferred Stock for which redemption is requested shall cease and terminate, except only the right to receive the Redemption Price thereof, but without interest.

D. Liquidation Preference.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series B Preferred Stock shall be entitled to receive, subject to the provisions of paragraph G and before any payment shall be made to the holders of the shares of Common Stock, the amount of \$100.00 per share, plus accumulated dividends. After payment to the holders of the Series B Preferred Stock of the full amount as aforesaid, the holders of the Series B Preferred Stock as such shall have no right or claim to any of the remaining assets which shall be distributed ratably to the holders of the Common Stock. If, upon any such liquidation, dissolution or winding up, the assets available therefor are not sufficient to permit payments to the holders of Series B Preferred Stock of the full amount as aforesaid, then subject to the provisions of paragraph G, the holders of the Series B Preferred Stock then outstanding shall share ratably in the distribution of assets in accordance with the sums which would be payable if such holders were to receive the full amounts as aforesaid.

E. Sinking Fund.

There shall be no sinking fund applicable to the shares of Series B Preferred Stock.

F. Conversion.

The shares of Series B Preferred Stock shall not be convertible into any shares of Common Stock or any other class of shares, nor exchanged for any shares of Common Stock or any other class of shares.

G. Superior Stock.

The Corporation may issue stock with preferences superior or equal to the shares of the Series B Preferred Stock without the consent of the holders thereof.

H. Voting Rights.

Each share of the Series B Preferred Stock shall be entitled to equal voting rights, share for share, with each share of the Common Stock.

(b) ESOP Convertible Preferred Stock, Series C.

The shares of the ESOP Convertible Preferred Stock, Series C, of the Corporation shall be designated "ESOP Convertible Preferred Stock, Series C," and the number of shares constituting such series shall be 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 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 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.

(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.

(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 in cash or shares of Common Stock, or a combination thereof, as permitted by paragraph F(5). From and after the date fixed for redemption, dividends on shares of ESOP Preferred Stock called for redemption will cease to accrue, such shares will no longer be deemed to be outstanding and all rights in respect of such shares of the Corporation shall cease, except the right to receive the redemption price. If less than all of the outstanding shares of ESOP Preferred Stock are to be redeemed, the Corporation shall either redeem a portion of the shares of each holder determined pro rata based on the number of shares held by each holder or shall select the shares to be redeemed by lot, as may be determined by the Board of Directors of the Corporation.

(2) Unless otherwise required by law, notice of redemption will be sent to the holders of ESOP Preferred Stock at the address shown on the books of the Corporation or any transfer agent for the ESOP Preferred Stock by first-class mail, postage prepaid, mailed not less than twenty (20) days nor more than sixty (60) days prior to the redemption date. Each such notice shall state: (i) the redemption date; (ii) the total number of shares of the ESOP Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date; and (vi) the conversion rights of the shares to be redeemed, the period within which conversion rights may be exercised, and the Conversion Ratio and number of shares of Common Stock issuable upon conversion of a share of ESOP Preferred Stock at the time. These notice provisions may be supplemented if necessary in order to comply with optional redemption provisions for preferred stock which may be required under the Internal Revenue Code of 1986, as amended, or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Upon surrender of the certificates for any shares so called for redemption and not previously converted (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the date fixed for redemption and at the applicable redemption price set forth in this paragraph F.

(3) In the event of a change in the federal tax law of the United States of America which has the effect of precluding the Corporation from claiming any of the tax deductions for dividends paid on the ESOP Preferred Stock when such dividends are used as provided under Section 404(k)(2) of the Internal Revenue Code of 1986, as amended and in effect on the date shares of ESOP Preferred Stock are initially issued, the Corporation may, within 180 days following the effective date of such tax legislation and implementing regulations of the Internal Revenue Service, if any, in its sole discretion and notwithstanding anything to the contrary in paragraph F(1), elect to redeem any or all such shares for the amount payable in respect of the shares upon liquidation of the Corporation pursuant to paragraph D.

(4) In the event the C&S/Sovran Retirement Savings, ESOP and Profit Sharing Plan (as amended, together with any successor plan, the "Plan") is terminated, the Corporation shall, notwithstanding anything to the contrary in paragraph F(1), redeem all shares of ESOP Preferred Stock for the amount payable in respect of the shares upon redemption of the ESOP Preferred Stock pursuant to paragraph F(1) hereof.

(5) The Corporation, at its option, may make payment of the redemption price required upon redemption of shares of ESOP Preferred Stock in 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, limitations or restrictions thereon, that the ESOP Preferred Stock had immediately prior to such transaction, except that after such transaction each share of the ESOP Preferred Stock shall be convertible, otherwise on the terms and conditions provided by paragraph E hereof, into the qualifying employer securities so receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election to receive any kind or amount of stock, securities, cash or other property (other than such qualifying employer securities and a cash payment, if applicable, in lieu of fractional shares) receivable upon such transaction (provided that, if the kind or amount of qualifying employer securities receivable upon such transaction is not the same for each non-electing share, then the kind and amount of qualifying employer securities receivable upon such transaction for each non-electing share shall be the kind and amount so receivable per share by a plurality of the non-electing shares). The rights of the ESOP Preferred Stock as preferred stock of such successor or resulting company shall successively be subject to adjustments pursuant to paragraph I hereof after any such transaction as nearly equivalent to the adjustments provided for by such paragraph prior to such transaction. The Corporation shall not consummate any such merger, consolidation or similar transaction unless all then outstanding shares of the ESOP Preferred Stock shall be assumed and authorized by the successor or resulting company as aforesaid.



(2) In the event that the Corporation shall consummate any consolidation or merger or similar transaction, however named, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged for or changed, reclassified or converted into other stock or securities or cash or any other property, or any combination thereof, other than any such consideration which is constituted solely of qualifying employer securities (as referred to in paragraph H(1)) and cash payments, if applicable, in lieu of fractional shares, all outstanding shares of ESOP Preferred Stock shall, without any action on the part of the Corporation or any holder thereof (but subject to paragraph H(3)), be deemed converted by virtue of such merger, consolidation or similar transaction immediately prior to such consummation into the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted at such time, and each share of ESOP Preferred Stock shall, by virtue of such transaction and on the same terms as apply to the holders of Common Stock, be converted into or exchanged for the aggregate amount of stock, securities, cash or other property (payable in like kind) receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election as to the kind or amount of stock, securities, cash or other property receivable upon such transaction (provided that, if the kind or amount of stock, securities, cash or other property receivable upon such transaction is not the same for each non-electing share, then the kind and amount of stock, securities, cash or other property receivable upon such transaction for each non-electing share shall be the kind and amount so receivable per share by a plurality of the non-electing shares).

(3) In the event the Corporation shall enter into any agreement providing for any consolidation or merger or similar transaction described in paragraph H(2), then the Corporation shall as soon as practicable thereafter (and in any event at least ten (10) business days before consummation of such transaction) give notice of such agreement and the material terms thereof to each holder of ESOP Preferred Stock and each such holder shall have the right to elect, by written notice to the Corporation, to receive, upon consummation of such transaction (if and when such transaction is consummated), from the Corporation or the successor of the Corporation, in redemption and retirement of such ESOP Preferred Stock, a cash payment equal to the amount payable in respect of shares of ESOP Preferred Stock upon redemption pursuant to paragraph F(1) hereof. No such notice of redemption shall be effective unless given to the Corporation prior to the close of business on the second business day prior to consummation of such transaction, unless the Corporation or the successor of the Corporation shall waive such prior notice, but any notice of redemption so given prior to such time may be withdrawn by notice of withdrawal given to the Corporation prior to the close of business on the second business day prior to consummation of such transaction.

#### I. Anti-dilution Adjustments.

(1) In the event the Corporation shall, at any time or from time to time while any of the shares of the ESOP Preferred Stock are outstanding, (i) pay a dividend or make a distribution in respect of the Common Stock in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, in each case whether by reclassification of shares, recapitalization of the Corporation (including a recapitalization effected by a merger or consolidation to which paragraph H hereof does not apply) or otherwise, the Conversion Ratio in effect immediately prior to such action shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which is the number of shares of Common Stock outstanding immediately before such event and the denominator of which is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this paragraph I(1) shall be given effect, upon payment of such a dividend or distribution, as of the record date for the determination of shareholders entitled to receive such dividend or distribution (on a retroactive basis) and in the case of a subdivision or combination shall become effective immediately as of the effective date thereof.

(2) In the event that the Corporation shall, at any time or from time to time while any of the shares of ESOP Preferred Stock are outstanding, issue to holders of shares of Common Stock as a dividend or distribution, including by way of a reclassification of shares or a recapitalization of the Corporation, any right or warrant to purchase shares of Common Stock (but not including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock) at a purchase price per share less than the Fair Market Value (as hereinafter defined) of a share of Common Stock on the date of issuance of such right or warrant, then, subject to the provisions of paragraphs I(5) and I(6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Common Stock which could be purchased at the Fair Market Value of a share of Common Stock at the time of such issuance for the maximum aggregate consideration payable upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Common Stock that could be acquired upon exercise in full of all such rights and warrants.

(3) In the event the Corporation shall, at any time and from time to time while any of the shares of ESOP Preferred Stock are outstanding, issue, sell or exchange shares of Common Stock (other than pursuant to any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock) and other than pursuant to any dividend reinvestment plan or employee or director incentive or benefit plan or arrangement, including any employment, severance or consulting agreement, of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted) for a consideration having a Fair Market Value on the date of such issuance, sale or exchange less than the Fair Market Value of such shares on the date of such issuance, sale or exchange, then, subject to the provisions of paragraphs I(5) and (6), the Conversion Ratio shall be adjusted by multiplying such Conversion Ratio by the fraction the numerator of which shall be the sum of (i) the Fair Market Value of all the shares of Common Stock outstanding on the day immediately preceding the first public announcement of such issuance, sale or exchange plus (ii) the Fair Market Value of the consideration received by the Corporation in respect of such issuance, sale or exchange of shares of Common Stock, and the denominator of which shall be the product of (i) the Fair Market Value of a share of Common Stock on the day immediately preceding the first public announcement of such issuance, sale or exchange multiplied by (ii) the sum of the number of shares of Common Stock outstanding on such day plus the number of shares of Common Stock so issued, sold or exchanged by the Corporation. In the event the Corporation shall, at any time or from time to time while any shares of ESOP Preferred Stock are outstanding, issue, sell or exchange any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock), other than any such issuance to holders of shares of Common Stock as a dividend or distribution (including by way of a reclassification of shares or a recapitalization of the Corporation) and other than pursuant to any dividend reinvestment plan or employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted, for a consideration having a Fair Market Value 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 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.

(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 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 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 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 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 each other.

#### C. Liquidation Preference.

(1) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the holders of Series BB Preferred Stock shall be entitled to receive out of the assets of the Corporation available for distribution to shareholders an amount equal to \$25 per share plus an amount equal to accrued and unpaid dividends thereon to and including the date of such distribution, and no more, before any distribution shall be made to the holders of any class of stock of the Corporation ranking junior to the Series BB Preferred Stock as to the distribution of assets.

(2) In the event the assets of the Corporation available for distribution to shareholders upon any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to the Series BB Preferred Stock and any other shares of preferred stock of the Corporation ranking on a parity with the Series BB Preferred Stock as to the distribution of assets, the holders of Series BB Preferred Stock and the holders of such other preferred stock shall share ratably in any distribution of assets of the Corporation in proportion to the full respective preferential amounts to which they are entitled.

(3) The merger or consolidation of the Corporation into or with any other corporation, the merger or consolidation of any other corporation into or with the Corporation or the sale of the assets of the Corporation substantially as an entirety shall not be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph C.

#### D. Redemption.

(1) The Corporation, at its option, may redeem all or any shares of the Series BB Preferred Stock at any time at a redemption price (the "Redemption Price") consisting of the sum of (i) \$25 per share and (ii) an amount equal to accrued and unpaid dividends thereon to and including the date of redemption.

(2) If less than all the outstanding shares of Series BB Preferred Stock are to be redeemed, the shares to be redeemed shall be selected pro rata as nearly as practicable or by lot, as the Board of Directors may determine.

(3) Notice of any redemption shall be given by first class mail, postage prepaid, mailed not less than 60 nor more than 90 days prior to the date fixed for redemption to the holders of record of the shares of Series BB Preferred Stock to be redeemed, at their respective addresses appearing on the books of the Corporation. Notice so mailed shall be conclusively presumed to have been duly given whether or not actually received. Such notice shall state: (1) the date fixed for redemption; (2) the Redemption Price; (3) the right of the holders of Series BB Preferred Stock to convert such stock into Common Stock until the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day); (4) if 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 redemption date shall be repaid to the Corporation, on demand, and thereafter the holder of any such shares shall look only to the Corporation for the payment, without interest, of the Redemption Price.

(5) Any provisions of paragraph D or E to the contrary notwithstanding, in the event that any quarterly dividend payable on the Series BB Preferred Stock shall be in arrears and until all such dividends in arrears shall have been paid or declared and set apart for payment, the Corporation shall not redeem any shares of Series BB Preferred Stock unless all outstanding shares of Series BB Preferred Stock are simultaneously redeemed and shall not purchase or otherwise acquire any shares of Series BB Preferred Stock except in accordance with a purchase offer made by the Corporation on the same terms to all holders of record of Series BB Preferred Stock for the purchase of all outstanding shares thereof.

#### E. Purchase by the Corporation.

(1) Except as provided in paragraph D(5), the Corporation shall be obligated to purchase shares of Series BB Preferred Stock tendered by the holder thereof for purchase hereunder, at a purchase price consisting of the sum of (i) \$25 per share and (ii) an amount equal to accrued and unpaid dividends thereon to and including the date of purchase. In order to exercise his right to require the Corporation to purchase his shares of Series BB Preferred Stock, the holder thereof shall surrender the Certificate(s) therefor duly endorsed if the Corporation shall so require or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office of the Transfer Agent(s) for the Series BB Preferred Stock, or at such other office as may be designated by the Corporation, together with written notice that such holder irrevocably elects to sell such shares to the Corporation. Shares of Series BB Preferred Stock shall be deemed to have been purchased by the Corporation immediately prior to the close of business on the date such shares are tendered for sale to the Corporation and notice of election to sell the same is received by the Corporation in accordance with the foregoing provisions. As of such date the shares so tendered for sale shall be deemed to be no longer outstanding, dividends thereon shall cease to accrue and all rights of the holder of such shares as a shareholder of the Corporation shall cease, except the right to receive the purchase price.

#### F. Conversion Rights.

The holders of shares of Series BB Preferred Stock shall have the right, at their option, to convert such shares into shares of Common Stock on the following terms and conditions:

(1) Shares of Series BB Preferred Stock shall be convertible at any time into fully paid and nonassessable shares of Common Stock (calculated as to each conversion to the nearest 1/1,000 of a share) at the initial rate of 6.17215 shares of Common Stock for each share of Series BB Preferred Stock surrendered for conversion (the "Conversion Rate"). The Conversion Rate shall be subject to adjustment from time to time as hereinafter provided. No payment or adjustment shall be

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made on account of any accrued and unpaid dividends on shares of Series BB Preferred Stock surrendered for conversion prior to the record date for the determination of shareholders entitled to such dividends or on account of any dividends on the



Common Stock issued upon such conversion subsequent to the record date for the determination of shareholders entitled to such dividends. If any shares of Series BB Preferred Stock shall be called for redemption, the right to convert the shares designated for redemption shall terminate at the close of business on the 15th day prior to the redemption date (or the next succeeding business day, if the 15th day is not a business day) unless default be made in the payment of the Redemption Price. In the event of default in the payment of the Redemption Price, the right to convert the shares designated for redemption shall terminate at the close of business on the business day immediately preceding the date that such default is cured.

(2) In order to convert shares of Series BB Preferred Stock into Common Stock, the holder thereof shall surrender the certificate(s) therefor, duly endorsed if the Corporation shall so require, or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office of the Transfer Agent(s) for the Series BB Preferred Stock, or at such other office as may be designated by the Corporation, together with written notice that such holder irrevocably elects to convert such shares. Such notice shall also state the name(s) and address(es) in which such holder wishes the certificate(s) for the shares of Common Stock issuable upon conversion to be issued. As soon as practicable after receipt of the certificate(s) representing the shares of Series BB Preferred Stock to be converted and the notice of election to convert the same, the Corporation shall issue and deliver at said office a certificate or certificates for the number of whole shares of Common Stock issuable upon conversion of the shares of Series BB Preferred Stock surrendered for conversion, together with a cash payment in lieu of any fraction of a share, as hereinafter provided, to the person(s) entitled to receive the same. Shares of Series BB Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the date such shares are surrendered for conversion and notice of election to convert the same is received by the Corporation in accordance with the foregoing provisions, and the person(s) entitled to receive the Common Stock issuable upon such conversion shall be deemed for all purposes as record holder(s) of such Common Stock as of such date.

(3) No fractional shares of Common Stock shall be issued upon conversion of any shares of Series BB Preferred Stock. If more than one share of Series BB Preferred Stock is surrendered at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares so surrendered. If the conversion of any shares of Series BB Preferred Stock results in a fractional share of Common Stock, the Corporation shall pay cash in lieu thereof in an amount equal to such fraction multiplied times the closing price of the Common Stock on the date on which the shares of Series BB Preferred Stock were duly surrendered for conversion, or if such date is not a trading date, on the next succeeding trading date. The closing price of the Common Stock for any day shall mean the last reported sales price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, on the New York Stock Exchange, or, if the Common Stock is not then listed on such Exchange, on the principal national securities exchange on which the Common Stock is listed for trading, or, if not then listed for trading on any national securities exchange, the average of the closing bid and asked prices of the Common Stock as furnished by the National Quotation Bureau, Inc., or if the National Quotation Bureau, Inc. ceases to furnish such information, by a comparable independent securities quotation service.

(4) In the event the Corporation shall at any time (i) pay a dividend or make a distribution to holders of Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the Conversion Rate in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision or combination shall be adjusted so that the holder of any shares of Series BB Preferred Stock surrendered for conversion after such record date or effective date shall be entitled to receive the number of shares of Common Stock which he would have owned or have been entitled to receive immediately following such record date or effective date had such shares of Series BB Preferred Stock been converted immediately prior thereto.

(5) Whenever the Conversion Rate shall be adjusted as herein provided (i) the Corporation shall forthwith keep available at the office of the Transfer Agent(s) for the Series BB Preferred Stock a statement describing in reasonable detail the adjustment, the facts requiring such adjustment and the method of calculation used; and (ii) the Corporation shall cause to be mailed by first class mail, postage prepaid, as soon as practicable to each holder of record of shares of Series BB Preferred Stock a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate.

(6) In the event of any consolidation of the Corporation with or merger of the Corporation into any other corporation (other than a merger in which the Corporation is the surviving corporation) or a sale of the assets of the Corporation substantially as an entirety, the holder of each share of Series BB Preferred Stock shall have the right, after such consolidation, merger or sale to convert such share into the number and kind of shares of stock or other securities and the amount and kind of property receivable upon such consolidation, merger or sale by a holder of the number of shares of Common Stock issuable upon conversion of such share of Series BB Preferred Stock immediately prior to such consolidation, merger or sale. Provision shall be made for adjustments in the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments provided for in paragraph F(4). The provisions of this paragraph F(6) shall similarly apply to successive consolidations, mergers and sales.

(7) The Corporation shall pay any taxes that may be payable in respect of the issuance of shares of Common Stock upon conversion of shares of Series BB Preferred Stock, but the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance of shares of Common Stock in a name other than that in which the shares of Series BB Preferred Stock so converted are registered, and the Corporation shall not be required to issue or deliver any such shares unless and until the person(s) requesting such issuance shall have paid to the Corporation the amount of any such taxes, or shall have established to the satisfaction of the Corporation that such taxes have been paid.

(8) The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the full number of shares of Common Stock issuable upon the conversion of all shares of Series BB Preferred Stock then outstanding.

(9) In the event that:

(i) The Corporation shall declare a dividend or any other distribution on its Common Stock, payable otherwise than in cash out of retained earnings; or

(ii) The Corporation shall authorize the granting to the holders of its Common Stock of rights to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(iii) The Corporation shall propose to effect any consolidation of the Corporation with or merger of the Corporation with or into any other corporation or a sale of the assets of the company substantially as an entirety which would result in an adjustment under paragraph F(6),

the Corporation shall cause to be mailed to the holders of record of Series BB Preferred Stock at least 20 days prior to the applicable date hereinafter specified a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined or (y) the date on which such consolidation, merger or sale is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such consolidation, merger or sale. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, consolidation, merger or sale.

#### G. Voting Rights.

Holders of Series BB Preferred Stock shall have no voting rights except as required by law and as follows: in the event that any quarterly dividend payable on the Series BB Preferred Stock is in arrears, the holders of Series BB Preferred Stock shall be entitled to vote together with the holders of Common Stock at the Corporation's next meeting of shareholders and at each subsequent meeting of shareholders unless all dividends in arrears have been paid or declared and set apart for payment prior to the date of such meeting. For the purpose of this paragraph G, each holder of Series BB Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which his Series BB Preferred Stock is then convertible.

#### H. Reacquired Shares.

Shares of Series BB Preferred Stock converted, redeemed, or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

#### I. No Sinking Fund.

Shares of Series BB Preferred Stock are not subject to the operation of a sinking fund.

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.

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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.  
Name: Hugh L. McColl, Jr.  
Title: 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

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(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 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 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 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 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 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.

| <b>Redemption Period</b>        | <b>Redemption Price Per Share</b> | <b>Redemption Price Per Depository Share</b> |
|---------------------------------|-----------------------------------|--|
| 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 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:

(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 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 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.

| <b>Redemption Period</b>         | <b>Redemption Price Per Share</b> | <b>Redemption Price Per Depositary Share</b> |
|----------------------------------|-----------------------------------|--|
| 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 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:

(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,

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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 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.

IN WITNESS WHEREOF, Bank of America has caused this Certificate of Merger to be executed by a duly authorized officer on this 31st 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 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 29th 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 15(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 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, 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.

BANKAMERICA CORPORATION

/s/ TERESA M. BRENNER

Name: Teresa M. Brenner  
Title: Associate General Counsel

**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.

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#### 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 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 *apro 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.

**(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 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 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

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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.

**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 recent rate that could have been determined in accordance with the first sentence of this paragraph had Series E Preferred Stock been outstanding. The calculation agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series E Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series E Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$25,000 per share of Series E Preferred Stock, and no more, payable quarterly in arrears on each February 15, May 15, August 15 and November 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from and including the date of issuance of the Series E Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series E Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate per annum equal to the greater of (i) Three-Month LIBOR plus a spread of 0.35% and (ii) 4.00%. The record date for payment of dividends on the Series E Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series E Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series E Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series E Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series E Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series E Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or

into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *pro 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 the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series E Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series E Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series E Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on

November 15, 2011, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series E Preferred Stock shall be \$25,000 per share plus dividends that have been declared but not paid.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series E Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series E Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series E Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series E Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series E Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series E Preferred Stock at the time outstanding, the shares of Series E Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series E Preferred Stock in proportion to the number of Series E Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series E Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series E Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraph 7(b) below or as required by Delaware law.

#### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series E Preferred Stock or any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b) have been conferred and are exercisable, have not been paid in an aggregate amount equal, as to any class or series, to at least six quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Series E Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the



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Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors of the Corporation shall at no time include more than two such directors. Each such director elected by the holders of shares of Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with the Series E Preferred Stock as to payment of dividends is a "Preferred Director."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series E Preferred Stock and any other class or series of our stock that ranks on parity with Series E Preferred Stock as to payment of dividends and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series E Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series E Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series E Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series E Preferred Stock and any other class or series of preferred stock that ranks on parity with Series E Preferred Stock as to payment of dividends, if any, for at least four quarterly Dividend Periods, then the right of the holders of Series E Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate and the number of directors constituting the board of directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series E Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**Section 8. Preemption and Conversion.** The holders of Series E Preferred Stock shall not have any rights of preemption or rights to convert such Series E Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series E Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series E Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series E Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series E Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

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**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

**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES F**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Floating Rate Non-Cumulative Preferred Stock, Series F” (the “*Series F Preferred Stock*”). Each share of Series F Preferred Stock shall be identical in all respects to every other share of Series F Preferred Stock. Series F Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series F Preferred Stock shall be 7,001. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series F Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series F Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series F Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series F Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series F Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series F Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series F Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“Series F Preferred Stock” shall have the meaning set forth in Section 1 hereof.

“Telerate Page 3750” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“Three-Month LIBOR” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “Dividend Determination Date”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series F Preferred Stock been outstanding. The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series F Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series F Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$100,000 per share of Series F Preferred Stock, and no more, payable quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “Dividend Payment Date”). The period from and including the date of issuance of the Series F Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “Dividend Period.” Dividends on each share of Series F Preferred Stock will accrue on the liquidation preference of \$100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to Three-Month LIBOR plus a spread of 0.40% and (2) thereafter at a rate per annum equal to the greater of (i) Three-Month LIBOR plus a spread of 0.40% and (ii) 4.00%. The record date for payment of dividends on the Series F Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series F Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series F Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series F Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series F Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series F Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased,

redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or a *pro rata* portion, of the Series F Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series F Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series F Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series F Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series F Preferred Stock and the holders of any Parity Stock. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series F Preferred Stock and the aggregate of the current and accrued dividends due on the Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series F Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series F Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series F Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series F Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series F Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series F Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series F Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series F Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series F Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of

Series F Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series F Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series F Preferred Stock shall be \$100,000 per share plus dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series F Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series F Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series F Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series F Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series F Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series F Preferred Stock at the time outstanding, the shares of Series F Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series F Preferred Stock in proportion to the number of Series F Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series F Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.** The holders of the Series F Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

**Section 8. Preemption and Conversion.** The holders of Series F Preferred Stock shall not have any rights of preemption or rights to convert such Series F Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series F Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series F Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series F Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors of the

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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

**EXHIBIT A**  
**TO**  
**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**ADJUSTABLE RATE NON-CUMULATIVE PREFERRED STOCK, SERIES G**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “Adjustable Rate Non-Cumulative Preferred Stock, Series G” (the “*Series G Preferred Stock*”). Each share of Series G Preferred Stock shall be identical in all respects to every other share of Series G Preferred Stock. Series G Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series G Preferred Stock shall be 8,501. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series G Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors of the Corporation, the Committee or any other duly authorized committee of the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series G Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series G Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Calculation Agent*” shall mean The Bank of New York Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series G Preferred Stock.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series G Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F and (e) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series G Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series G Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

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“Series G Preferred Stock” shall have the meaning set forth in Section 1 hereof.

“Telerate Page 3750” means the display page so designated on the Moneyline/Telerate Service (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying rates or prices comparable to the London Interbank Offered Rate for U.S. dollar deposits).

“Three-Month LIBOR” means, with respect to any Dividend Period, the offered rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Telerate Page 3750 as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “Dividend Determination Date”). If such rate does not appear on Telerate Page 3750, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had Series G Preferred Stock been outstanding. The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series G Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series G Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$100,000 per share of Series G Preferred Stock, and no more, payable as follows: (i) if the Series G Preferred Stock is issued prior to March 15, 2012, semi-annually in arrears on each March 15 and September 15 through March 15, 2012; and (ii) from and including the later of March 15, 2012 and the date of issuance, quarterly in arrears on each March 15, June 15, September 15 and December 15; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “Dividend Payment Date”). The period from and including the date of issuance of the Series G Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “Dividend Period.” Dividends on each share of Series G Preferred Stock will accrue on the liquidation preference of \$100,000 per share for each Dividend Period (1) from the date of issuance to, but excluding, the Dividend Payment Date in March 2012 (if issued prior to that date) at a rate per annum equal to 5.63% and (2) thereafter at a rate per annum equal to the greater of (x) Three-Month LIBOR plus a spread of 0.40% and (y) 4.00%. The record date for payment of dividends on the Series G Preferred Stock shall be the last Business Day of the calendar month immediately preceding the month during which the Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series G Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series G Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable and the Corporation shall have no obligation to pay, and the holders of Series G Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series G Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series G Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *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.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series G Preferred Stock shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series G Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$100,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series G Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series G Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series G Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences plus any dividends which have been declared but not yet paid of Series G Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series G Preferred Stock and all holders of any Parity Stock, then the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

## Section 6. Redemption.

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series G Preferred Stock at the time outstanding, at any time on or after the later of March 15, 2012 and the date of original issuance of the Series G Preferred Stock, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series G Preferred Stock shall be \$100,000 per share plus dividends that have been declared but not paid plus accrued and unpaid dividends for the then-current Dividend Period to the redemption date.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series G Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 15 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series G Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series G Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series G Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series G Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series G Preferred Stock at the time outstanding, the shares of Series G Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series G Preferred Stock in proportion to the number of Series G Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation, the Committee or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series G Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

**Section 7. Voting Rights.** The holders of the Series G Preferred Stock will have no voting rights and will not be entitled to elect any directors, except as expressly provided by law.

**Section 8. Preemption and Conversion.** The holders of Series G Preferred Stock shall not have any rights of preemption or rights to convert such Series G Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors of the Corporation, the Committee or any authorized committee of the Board of Directors of the Corporation, without the vote of the holders of the Series G Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series G Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

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**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.

"*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,



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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 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.

#### **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

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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

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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 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 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 *pro 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.

#### **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 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

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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.

**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.



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 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.

#### **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 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 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 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

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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.

**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.



**EXHIBIT**  
**A CERTIFICATE OF DESIGNATIONS**  
**OF**  
**7.25% NON-CUMULATIVE PERPETUAL**  
**CONVERTIBLE PREFERRED STOCK, SERIES L**  
**OF**  
**BANK OF AMERICA CORPORATION**

**Section 1. Designation.** The designation of the series of preferred stock shall be “7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L”, \$0.01 par value, with a liquidation preference of \$1,000 per share (the “*Series L Preferred Stock*”). Each share of Series L Preferred Stock shall be identical in all respects to every other share of Series L Preferred Stock. Series L Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.** The number of authorized shares of Series L Preferred Stock shall be 6,900,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series L Preferred Stock then outstanding) by further resolution duly adopted by the Board, the Committee or any other duly authorized committee of the Board and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such increase or reduction, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series L Preferred Stock.

**Section 3. Definitions.** As used herein with respect to Series L Preferred Stock:

“*Applicable Conversion Price*” at any given time means, for each share of Series L Preferred Stock, the price equal to \$1,000 divided by the Applicable Conversion Rate in effect at such time.

“*Applicable Conversion Rate*” means the Conversion Rate in effect at any given time.

“*Base Price*” has the meaning set forth in Section 6(d)(i).

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or required by law or regulation to close in New York, New York or in Charlotte, North Carolina.

“*Closing Price*” of the Common Stock on any determination date means the closing sale price or, if no closing sale price is reported, the last reported sale price of the shares of the Common Stock on the New York Stock Exchange on such date. If the Common Stock is not traded on the New York Stock Exchange on any determination date, the Closing Price of the Common Stock on such determination date means the closing sale price as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock is so listed or quoted, or if the Common Stock is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price for the Common Stock in the over-the-counter market as reported by Pink Sheets LLC or a similar organization, or, if that bid price is not available, the market price of the Common Stock on that date as determined by a nationally recognized independent investment banking firm retained by the Corporation for this purpose.

For purposes of this Certificate of Designations, all references herein to the “*Closing Price*” and “*last reported sale price*” of the Common Stock on the New York Stock Exchange shall be such closing sale price and last reported sale price as reflected on the website of the New York Stock Exchange (<http://www.nyse.com>) and as reported by Bloomberg Professional Service; *provided* that in the event that there is a discrepancy between the closing sale price or last reported sale price as reflected on the website of the New York Stock Exchange and as reported by Bloomberg Professional Service, the closing sale price and last reported sale price on the website of the New York Stock Exchange will govern.

“*Common Stock*” means the common stock, \$0.01 par value, of the Corporation.

“*Conversion Agent*” shall mean Computershare Trust Company, N.A. and Computershare Inc. collectively acting in their capacity as conversion agent for the Series L Preferred Stock, and their respective successors and assigns.

“*Conversion Date*” has the meaning set forth in Section 6(a)(v)(B).

“*Conversion Rate*” means for each share of Series L Preferred Stock, 20 shares of Common Stock, plus cash in lieu of fractional shares, subject to adjustment as set forth herein.

“*Current Market Price*” of the Common Stock on any day, means the average of the VWAP of the Common Stock over each of the ten consecutive Trading Days ending on the earlier of the day in question and the day before the Ex-Date or other specified date with respect to the issuance or distribution requiring such computation, appropriately adjusted to take into account the occurrence during such period of any event described in Section 7(a)(i) through (vi).

“*Depository*” means DTC or its nominee or any successor depository appointed by the Corporation.

“*Dividend Payment Date*” has the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” has the meaning set forth in Section 4(a) hereof.

“*Dividend Threshold Amount*” has the meaning set forth in Section 7(a)(v).

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Exchange Property*” has the meaning set forth in Section 8(a).

“*Ex-Date*,” when used with respect to any issuance or distribution, means the first date on which the Common Stock or other securities trade without the right to receive the issuance or distribution.

“*Fundamental Change*” has the meaning set forth in Section 6(d)(i).

“*Holder*” means the Person in whose name the shares of Series L Preferred Stock are registered, which may be treated by the Corporation, Transfer Agent, Registrar, paying agent and Conversion Agent as the absolute owner of the shares of Series L Preferred Stock for the purpose of making payment and settling conversions and for all other purposes.

“*Junior Stock*” means the Common Stock and any other class or series of capital stock of the Corporation over which Series L Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Make-Whole Acquisition*” means the occurrence, prior to any Conversion Date, of one of the following:

(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act files a Schedule TO or any schedule, form, or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of common equity of the Corporation representing more than 50% of the voting power of the Common Stock; or

(b) consummation of the Corporation’s consolidation or merger or similar transaction or any sale, lease, or other transfer in one transaction or a series of related transactions of all or substantially all of the Corporation’s and the Corporation’s subsidiaries’ consolidated assets, taken as a whole, to any Person other than one of the Corporation’s subsidiaries, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property, other than pursuant to a transaction in which the persons that “beneficially owned” (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, voting shares immediately prior to such transaction beneficially own, directly or indirectly, voting shares representing a majority of the total voting power of all outstanding classes of voting shares of the continuing or surviving person immediately after the transaction; *provided, however* that a Make-Whole Acquisition will not be deemed to have occurred if at least 90% of the consideration received by holders of the Common Stock in the transaction or transactions consists of shares of common stock or American Depositary Receipts in respect of common stock that are traded on a U.S. national securities exchange or securities exchange in the European Economic Area or that will be so traded when issued or exchanged in connection with a Make-Whole Acquisition.

“*Make-Whole Acquisition Conversion*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Conversion Period*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Effective Date*” has the meaning set forth in Section 6(c)(i).

“*Make-Whole Acquisition Stock Price*” means the price paid per share of Common Stock in the event of a Make-Whole Acquisition. If the holders of shares of Common Stock receive only cash in the Make-Whole Acquisition, the Make-Whole Acquisition Stock Price will be the cash amount paid per share of Common Stock. Otherwise, the Make-Whole Acquisition Stock Price shall be the average of the Closing Price per share of Common Stock on the ten Trading Days up to, but not including, the Make-Whole Acquisition Effective Date.

“Make-Whole Shares” has the meaning set forth in Section 6(c)(i).

“Nonpayment” has the meaning set forth in Section 11(b)(i).

“Notice of Optional Conversion” has the meaning set forth in Section 6(b)(iii).

“Optional Conversion Date” has the meaning set forth in Section 6(b)(iii).

“*Parity Stock*” means (a) the Corporation’s 7% Cumulative Redeemable Preferred Stock, Series B, (b) the Corporation’s 6.204% Non-Cumulative Preferred Stock, Series D, (c) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series E, (d) the Corporation’s Floating Rate Non-Cumulative Preferred Stock, Series F (if and when issued and outstanding), (e) the Corporation’s Adjustable Rate Non-Cumulative Preferred Stock, Series G (if and when issued and outstanding), (f) the Corporation’s 6.625% Non-Cumulative Preferred Stock, Series I, (g) the Corporation’s 7.25% Non-Cumulative Preferred Stock, Series J, (h) the Corporation’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K (if and when issued and outstanding) and (i) any other class or series of capital stock of the Corporation hereafter authorized that ranks on par with the Series L Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Person*” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

“Preferred Director” has the meaning set forth in Section 11(b)(i).

“Purchased Shares” has the meaning set forth in Section 7(a)(vi)

“*Reference Price*” means the price paid per share of Common Stock in the event of a Fundamental Change. If the holders of shares of Common Stock receive only cash in the Fundamental Change, the Reference Price shall be the cash amount paid per share. Otherwise, the Reference Price will be the average of the Closing Price per share of Common Stock on the ten Trading Days up to, but not including, the effective date of the Fundamental Change.

“*Reorganization Event*” has the meaning set forth in Section 8.

“*Registrar*” means Computershare Trust Company, N.A. or its nominee or any successor or registrar appointed by the Corporation.

“*Senior Stock*” means any class or series of capital stock of the Corporation authorized which has preference or priority over the Series L Preferred Stock as to the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“Series L Preferred Stock” has the meaning set forth in Section 1.

“*spin-off*” has the meaning set forth in Section 7(a)(iv).

“*Trading Day*” for purposes of determining the VWAP or Closing Price means a day on which the shares of Common Stock:

(a) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business; and

(b) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

“*Transfer Agent*” means Computershare Trust Company, N.A. acting as Transfer Agent, Registrar, and Conversion Agent for the Series L Preferred Stock, and its successors and assigns.

“*Voting Parity Securities*” has the meaning set forth in Section 11(b)(i).

“VWAP” means, per share of the Common Stock on any Trading Day, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “BAC UN <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the open of trading on the relevant Trading Day until the close of trading on the relevant Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of the Common Stock on such trading days determined, using a volume-weighted average method, by a nationally recognized investment banking firm (unaffiliated with the Corporation) retained for this purpose by the Corporation).

#### Section 4. Dividends.

**(a) Rate.** Holders of Series L Preferred Stock shall be entitled to receive, when, as and if declared by the Board or any duly authorized committee of the Board, but only out of assets legally available under Delaware law for payment, non-cumulative cash dividends on the liquidation preference of \$1,000 per share of Series L Preferred Stock, and no more, payable quarterly in arrears on each January 30, April 30, July 30 and October 30 of each year, beginning on April 30, 2008; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day, unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day (in either case, without any interest or other payment in respect of such delay) (each such day on which dividends are payable a “Dividend Payment Date”). The period from and including the date of issuance of the Series L Preferred Stock or any Dividend Payment Date to but excluding the next Dividend Payment Date is a “Dividend Period”. Dividends on each share of Series L Preferred Stock will accrue on the liquidation preference of \$1,000 per share at a rate per annum equal to 7.25%. The record date for payment of dividends on the Series L Preferred Stock shall be the first day of the calendar month in which the relevant Dividend Payment Date falls. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation will be rounded to the nearest cent, with one-half cent being rounded upward. Dividends on the Series L Preferred Stock will cease to accrue after conversion, as described below. If the Corporation issues additional shares of the Series L Preferred Stock, dividends on those additional shares will accrue from the preceding scheduled Dividend Payment Date at the dividend rate.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series L Preferred Stock shall be non-cumulative. Accordingly, if for any reason the Board or a duly authorized committee of the Board does not declare a dividend on the Series L Preferred Stock for a Dividend Period prior to the related Dividend Payment Date, that dividend will not accrue, and the Corporation will have no obligation to pay a dividend for that Dividend Period on the Dividend Payment Date or at any time in the future, whether or not the Board or a duly authorized committee of the Board declares a dividend on the Series L Preferred Stock or any other series of the Corporation’s preferred stock or Common Stock for any future Dividend Period.

**(c) Dividend Stopper.** So long as any share of Series L Preferred Stock remains outstanding, (i) no dividend shall be declared and paid or set aside for payment and no distribution shall be declared and made or set aside for payment on any Junior Stock (other than a dividend payable solely in shares of Junior Stock), (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock will be repurchased, redeemed, or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series L Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, during a Dividend Period, unless, in each case, the full dividends for the then-current Dividend Period on all outstanding shares of Series L Preferred Stock have been declared and paid or declared and a sum sufficient for the payment of those dividends has been set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation’s Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreements) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series L Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series L Preferred Stock for the then-current Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series L Preferred Stock and on any Parity Stock but does not make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series L Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series L Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. The Corporation is not obligated to and will not pay Holders of the Series L Preferred Stock any interest or sum of money in lieu of interest on any dividend not paid on a Dividend Payment Date. The Corporation is not obligated to and will not pay Holders of the Series L Preferred Stock any dividend in excess of the dividends



on the Series L Preferred Stock that are payable as described herein. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board or any duly authorized committee of the Board may be declared and paid on any Junior Stock from time to time out of any assets legally available therefor, and the shares of Series L Preferred Stock shall not be entitled to participate in any such dividend.

**Section 5. Right to Convert.** Each Holder shall have the right, at such Holder's option, at any time, to convert all or any portion of such Holder's Series L Preferred Stock into shares of Common Stock at the Applicable Conversion Rate (subject to the conversion procedures set forth in Section 6 herein) plus cash in lieu of fractional shares.

**Section 6. Conversion.**

**(a) Conversion Procedures.**

(i) Effective immediately prior to the close of business on the Optional Conversion Date or any applicable Conversion Date, dividends shall no longer be declared on any converted shares of Series L Preferred Stock and such shares of Series L Preferred Stock shall cease to be outstanding, in each case, subject to the right of Holders to receive any declared and unpaid dividends on such shares and any other payments to which they are otherwise entitled pursuant to Section 5, Section 6 (b), Section 6(c), Section 6(d), Section 8 or Section 12 hereof, as applicable.

(ii) Prior to the close of business on the Optional Conversion Date or any applicable Conversion Date, shares of Common Stock issuable upon conversion of, or other securities issuable upon conversion of, any shares of Series L Preferred Stock shall not be deemed outstanding for any purpose, and Holders shall have no rights with respect to the Common Stock or other securities issuable upon conversion (including voting rights, rights to respond to tender offers for the Common Stock and rights to receive any dividends or other distributions on the Common Stock or other securities issuable upon conversion) by virtue of holding shares of Series L Preferred Stock.

(iii) Shares of Series L Preferred Stock duly converted in accordance with the terms hereof, or otherwise reacquired by the Corporation, will resume the status of authorized and unissued preferred stock, undesignated as to series and available for future issuance. The Corporation may from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series L Preferred Stock.

(iv) The Person or Persons entitled to receive the Common Stock and/or securities issuable upon conversion of Series L Preferred Stock shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or securities as of the close of business on the Optional Conversion Date or any applicable Conversion Date. In the event that a Holder shall not by written notice designate the name in which shares of Common Stock and/or cash, securities or other property (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series L Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Corporation shall be entitled to register and deliver such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Corporation or, in the case of global certificates, through book-entry transfer through the Depository.

(v) Conversion into shares of Common Stock will occur on the Optional Conversion Date or any applicable Conversion Date as follows:

(A) On the Optional Conversion Date, certificates representing shares of Common Stock shall be issued and delivered to Holders or their designee upon presentation and surrender of the certificate evidencing the Series L Preferred Stock to the Conversion Agent if shares of the Series L Preferred Stock are held in certificated form, and, if required, the furnishing of appropriate endorsements and transfer documents and the payment of all transfer and similar taxes. If a Holder's interest is a beneficial interest in a global certificate representing Series L Preferred Stock, a book-entry transfer through the Depository will be made by the Conversion Agent upon compliance with the Depository's procedures for converting a beneficial interest in a global security.

(B) On the date of any conversion at the option of Holders pursuant to Section 5, Section 6(b), Section 6 or Section 6(d), if a Holder's interest is in certificated form, a Holder must do each of the following in order to convert:

(1) complete and manually sign the conversion notice provided by the Conversion Agent, or a facsimile of the conversion notice, and deliver this irrevocable notice to the Conversion Agent;

(2) surrender the shares of Series L Preferred Stock to the Conversion Agent;

(3) if required, furnish appropriate endorsements and transfer documents;

(4) if required, pay all transfer or similar taxes; and

(5) if required, pay funds equal to any declared and unpaid dividend payable on the next Dividend Payment Date to which such Holder is entitled.

If a Holder's interest is a beneficial interest in a global certificate representing Series L Preferred Stock, in order to convert a Holder must comply with paragraphs (3) through (5) listed above and comply with the Depository's procedures for converting a beneficial interest in a global security.

The date on which a Holder complies with the procedures in this clause (v) is the "Conversion Date."

(C) The Conversion Agent shall, on a Holder's behalf, convert the Series L Preferred Stock into shares of Common Stock, in accordance with the terms of the notice delivered by such Holder described in clause (B) above. If the Conversion Date is prior to the record date relating to any declared dividend for the Dividend Period in which a Holder elects to convert, the Holder will not receive any declared dividends for that Dividend Period. If the Conversion Date is after the record date relating to any declared dividend and prior to the Dividend Payment Date, the Holder will receive that dividend on the relevant Dividend Payment Date if the Holder was the holder of record on the record date for that dividend. However, if the Conversion Date is after the record date and prior to the Dividend Payment Date, whether or not the Holder was the holder of record on the record date, the Holder must pay to the Conversion Agent when it converts its shares of Series L Preferred Stock an amount in cash equal to the full dividend actually paid on the Dividend Payment Date for the then-current Dividend Period on the shares of Series L Preferred Stock being converted, unless the Holder's shares of Series L Preferred Stock are being converted as a result of a conversion pursuant to Section 6(b), Section 6(c) or Section 6(d).

**(b) Conversion at the Corporation's Option.**

(i) On or after January 30, 2013, the Corporation may, at its option, at any time or from time to time, cause some or all of the Series L Preferred Stock to be converted into shares of Common Stock at the then-Applicable Conversion Rate if, for 20 Trading Days during any period of 30 consecutive Trading Days the Closing Price of the Common Stock exceeds 130% of the then-Applicable Conversion Price of the Series L Preferred Stock. If the Corporation exercises its optional conversion right on January 30, 2013, it will still pay any dividend payable (in accordance with Section 4) on January 30, 2013 to the applicable Holders of record. The Corporation will provide notice of its optional conversion within five Trading Days of the end of the 30 consecutive Trading Day period.

(ii) If the Corporation elects to cause less than all of the Series L Preferred Stock to be converted under clause (i) above, the Conversion Agent will select the Series L Preferred Stock to be converted by lot, or on a *pro rata* basis or by another method the Conversion Agent considers fair and appropriate, including any method required by DTC or any successor depository (so long as such method is not prohibited by the rules of any stock exchange or quotation association on which the Series L Preferred Stock is then traded or quoted). If the Conversion Agent selects a portion of a Holder's Series L Preferred Stock for partial conversion at the Corporation's option and such Holder converts a portion of its shares of Series L Preferred Stock, the converted portion will be deemed to be from the portion selected for conversion at the Corporation's option under this Section 6(b).

(iii) If the Corporation exercises the optional conversion right described in this Section 6(b), the Corporation shall provide notice of such conversion by first class mail to each Holder of record for the shares of Series L Preferred Stock to be converted (such notice a "Notice of Optional Conversion") or issue a press release for publication and make this information available on its website. The Conversion Date shall be a date selected by the Corporation (the "Optional Conversion Date"), and the Notice of Optional Conversion must be mailed, or the Corporation must issue the press release, not more than 20 days prior to the Optional Conversion Date. In addition to any information required by applicable law or regulation, the Notice of Optional Conversion or press release shall state, as appropriate:

(A) the Optional Conversion Date;

(B) the aggregate number of shares of Series L Preferred Stock to be converted and, if less than all of the shares of Series L Preferred Stock are to be converted, the percentage of shares of Series L Preferred Stock to be converted; and

(C) the number of shares of Common Stock to be issued upon conversion of each share of Series L Preferred Stock.

**(c) Conversion Upon Make-Whole Acquisition.**

(i) In the event of a Make-Whole Acquisition, each Holder shall have the option to convert its shares of Series L Preferred Stock (a "Make-Whole Acquisition Conversion") during the period (the "Make-Whole Acquisition Conversion Period") beginning on the effective date of the Make-Whole Acquisition (the "Make-Whole Acquisition Effective Date") and ending on the date that is 30 days after the Make-Whole Acquisition Effective Date and receive an additional number of shares of Common Stock (the "Make-Whole Shares") as set forth in clause (ii) below.

(ii) The number of Make-Whole Shares per share of Series L Preferred Stock shall be determined by reference to the table below for the applicable Make-Whole Acquisition Effective Date and the applicable Make-Whole Acquisition Stock Price:

| Effective Date | \$40.00 | \$41.00 | \$42.00 | \$44.00 | \$47.00 | \$50.00 | \$60.00 | \$80.00 | \$110.00 | \$150.00 | \$200.00 |
|----------------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|
|                | 5.00    | 4.79    | 4.61    | 4.20    | 3.68    | 3.25    | 2.14    | 1.04    | 0.51     | 0.27     | 0.14     |
| 1/24/2008      | 00      | 93      | 90      | 23      | 51      | 40      | 50      | 50      | 64       | 65       | 68       |
|                | 5.00    | 4.75    | 4.46    | 4.13    | 3.57    | 3.17    | 2.03    | 0.95    | 0.46     | 0.24     | 0.12     |
| 1/30/2009      | 00      | 12      | 43      | 86      | 02      | 60      | 17      | 63      | 82       | 80       | 85       |
|                | 5.00    | 4.64    | 4.29    | 3.98    | 3.38    | 2.93    | 1.76    | 0.64    | 0.22     | 0.10     | 0.03     |
| 1/30/2010      | 00      | 39      | 29      | 86      | 30      | 00      | 17      | 62      | 87       | 33       | 90       |
|                | 5.00    | 4.60    | 4.24    | 3.92    | 3.31    | 2.80    | 1.56    | 0.53    | 0.19     | 0.10     | 0.05     |
| 1/30/2011      | 00      | 49      | 29      | 50      | 70      | 40      | 50      | 00      | 64       | 67       | 00       |
|                | 5.00    | 4.57    | 4.24    | 3.83    | 3.25    | 2.58    | 1.26    | 0.23    | 0.07     | 0.04     | 0.02     |
| 1/30/2012      | 00      | 80      | 05      | 86      | 96      | 40      | 67      | 13      | 55       | 29       | 06       |
|                | 5.00    | 4.53    | 4.22    | 3.79    | 3.16    | 2.52    | 1.02    |         |          |          |          |
| 1/30/2013      | 00      | 66      | 14      | 32      | 60      | 60      | 17      | —       | —        | —        | —        |
|                | 5.00    | 4.53    | 4.22    | 3.79    | 3.16    | 2.52    | 1.02    |         |          |          |          |
| Thereafter     | 00      | 66      | 14      | 32      | 60      | 60      | 17      | —       | —        | —        | —        |

(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:

$$\frac{OS1}{OS0}$$

Where,

OS0 = the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution.

OS1 = 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:

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$$\frac{OS1}{OS0}$$

Where,

OS0 = the number of shares of Common Stock outstanding immediately prior to the effective date of such share subdivision, split, or combination.

OS1 = 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:

$$\frac{OS0 + X}{OS0 + Y}$$

Where,

OS0 = 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:

$$\frac{SP0}{SP0 - FMV}$$

Where,

SP0 = 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<sub>0</sub> = 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<sub>s</sub> = the average of the VWAP of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock over each of the first ten Trading Days commencing on and including the fifth Trading Day following the effective date of such distribution, or, if not traded on a national or regional securities exchange or over-the-counter market, the fair market value of the capital stock or equity interests representing the portion of the distribution applicable to one share of Common Stock on such date as determined by the Board.

(v) **Cash Distributions.** If the Corporation makes a distribution consisting exclusively of cash to all holders of the Common Stock, excluding (a) any cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of the Common Stock does not exceed \$0.64 in any fiscal quarter (the “*Dividend Threshold Amount*”), (b) any cash that is distributed in a Reorganization Event or as part of a spin-off referred to in clause (iv) above, (c) any dividend or distribution, in connection with the Corporation’s liquidation, dissolution, or winding up, and (d) any consideration payable in connection with a tender or exchange offer made by the Corporation or any of its subsidiaries, then in each event, the Conversion Rate in effect immediately following the record date for such distribution will be multiplied by the following fraction:

$$\frac{Sp_0}{Sp_0 - DIV}$$

Where,

SP<sub>0</sub> = the VWAP per share of Common Stock on the Trading Day immediately preceding the Ex-Date.

DIV = the cash amount per share of Common Stock of the dividend or distribution, as determined pursuant to the following paragraph.

If an adjustment is required to be made as set forth in this clause as a result of a distribution (1) that is a regularly scheduled quarterly dividend, such adjustment would be based on the amount by which such dividend exceeds the Dividend Threshold Amount or (2) that is not a regularly scheduled quarterly dividend, such adjustment would be based on the full amount of such distribution.

The Dividend Threshold Amount is subject to adjustment on an inversely proportional basis whenever the Conversion Rate is adjusted; *provided* that no adjustment will be made to the Dividend Threshold Amount for any adjustment made to the Conversion Rate pursuant to this clause (v).

(vi) **Self-Tender Offers and Exchange Offers** If the Corporation or any of its subsidiaries successfully completes a tender or exchange offer for the Common Stock where the cash and the value of any other consideration included in the payment per share of the Common Stock exceeds the VWAP per share of the Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer, then the Conversion Rate in effect at the close of business on such immediately succeeding Trading Day will be multiplied by the following fraction:

$$\frac{AC + (SP_0 \times OSI)}{OS_0 \times SP_0}$$

Where,

SP<sub>0</sub> = the VWAP per share of Common Stock on the Trading Day immediately succeeding the expiration of the tender or exchange offer.

OS0 = 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”).

OS1 = the number of shares of Common Stock outstanding immediately after the expiration of the tender or exchange offer, less any Purchased Shares.

AC = the aggregate cash and fair market value of the other consideration payable in the tender or exchange offer, as determined by the Board.

In the event that the Corporation, or one of its subsidiaries, is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Corporation, or such subsidiary, is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

(vii) **Rights Plans.** To the extent that the Corporation has a rights plan in effect with respect to the Common Stock on any Conversion Date, upon conversion of any shares of the Series L Preferred Stock, Holders will receive, in addition to the shares of Common Stock, the rights under the rights plan, unless, prior to such Conversion Date, the rights have separated from the shares of Common Stock, in which case the Conversion Rate will be adjusted at the time of separation as if the Corporation had made a distribution to all holders of the Common Stock as described in clause (iv) above, subject to readjustment in the event of the expiration, termination, or redemption of such rights.

(b) The Corporation may make such increases in the Conversion Rate, in addition to any other increases required by this Section 7, if the Corporation deems it advisable in order to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of rights or warrants to acquire shares of Common Stock) or from any event treated as such for income tax purposes or for any other reason.

(c)(i) All adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock. No adjustment in the Conversion Rate will be made unless such adjustment would require an increase or decrease of at least one percent therein; *provided*, that any adjustments which by reason of this subparagraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment; *provided further* that on the Optional Conversion Date, the Make-Whole Acquisition Effective Date or the effective date of a Fundamental Change, adjustments to the Conversion Rate will be made with respect to any such adjustment carried forward and which has not been taken into account before such date.

(ii) No adjustment to the Conversion Rate shall be made if Holders may participate in the transaction that would otherwise give rise to an adjustment, as a result of holding the Series L Preferred Stock, without having to convert the Series L Preferred Stock, as if they held the full number of shares of Common Stock into which their shares of the Series L Preferred Stock may then be converted.

(iii) The Applicable Conversion Rate will not be adjusted:

(A) upon the issuance of any shares of the Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation’s securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(B) upon the issuance of any shares of the Common Stock or rights or warrants to purchase those shares pursuant to any present or future employee, director, or consultant benefit plan or program of or assumed by the Corporation or any of its subsidiaries;

(C) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the shares of the Series L Preferred Stock were first issued;

(D) for a change in the par value or no par value of the Common Stock; or

(E) for accrued and unpaid dividends on the Series L Preferred Stock.

(d) Whenever the Conversion Rate is to be adjusted in accordance with Section 7(a) or Section 7(b), the Corporation shall: (i) compute the Conversion Rate in accordance with Section 7(a) or Section 7(b), taking into account the one percent threshold set forth in Section 7(c) hereof, and prepare and transmit to the Transfer Agent an officer’s certificate setting forth the Conversion Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; (ii) as soon as practicable following the occurrence of an event that requires an



adjustment to the Conversion Rate pursuant to Section 7(a) or Section 7(b), taking into account the one percent threshold set forth in Section 7(c) hereof (or if the Corporation is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and (iii) as soon as practicable following the determination of the revised Conversion Rate in accordance with Section 7(a) or Section 7(b) hereof, provide, or cause to be provided, a written notice to the Holders setting forth in reasonable detail the method by which the adjustment to the Conversion Rate was determined and setting forth the revised Conversion Rate.

#### **Section 8. Reorganization Events.**

(a) In the event of:

(i) the Corporation's consolidation or merger with or into another Person, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property of the Corporation or another Person;

(ii) any sale, transfer, lease, or conveyance to another Person of all or substantially all of the Corporation's property and assets, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property; or

(iii) any statutory exchange of the Corporation's securities with another Person (other than in connection with a merger or acquisition);

(any such event specified in this Section 8(a), a "*Reorganization Event*"); each share of Series L Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of Holders, become convertible into the kind of securities, cash, and other property receivable in such Reorganization Event by a holder of the shares of Common Stock that was not the counterparty to the Reorganization Event or an affiliate of such other party (such securities, cash, and other property, the "*Exchange Property*").

(b) In the event that holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the consideration that the Holders are entitled to receive will be deemed to be the types and amounts of consideration received by the majority of the holders of the shares of the Common Stock that affirmatively make an election (or of all such holders if none make an election). On each Conversion Date following a Reorganization Event, the Conversion Rate then in effect will be applied to the value on such Conversion Date of the securities, cash, or other property received per share of Common Stock, determined as set forth above. The amount of Exchange Property receivable upon conversion of any Series L Preferred Stock in accordance with Section 5, Section 6(b), Section 6(c) or Section 6(d) hereof shall be determined based upon the then Applicable Conversion Rate.

(c) The above provisions of this Section 8 shall similarly apply to successive Reorganization Events and the provisions of Section 7 shall apply to any shares of capital stock of the Corporation (or any successor) received by the holders of the Common Stock in any such Reorganization Event.

(d) The Corporation (or any successor) shall, within 20 days of the occurrence of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 8.

#### **Section 9. Liquidation Rights.**

(a) **Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series L Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders before any distribution of the assets of the Corporation may be made to the Holders of any Junior Stock to receive in full a liquidating distribution in the amount of the liquidation preference of \$1,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. After payment of this liquidating distribution, the holders of Series L Preferred Stock will not be entitled to any further participation in any distribution of the Corporation's assets in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. Distributions will be made only to the extent of the Corporation's assets remaining available after satisfaction of all liabilities to creditors and subject to the rights of holders of any securities ranking senior to the Series L Preferred Stock and *pro rata* as to the Series L Preferred Stock and any other shares of the Corporation's stock ranking equally as to such distribution.

(b) **Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series L Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series L Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series L Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series L Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 9, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or business of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

**Section 10. Redemption.**

The Series L Preferred Stock shall not be redeemable either at the Corporation's option or at the option of the Holders at any time.

**Section 11. Voting Rights.**

**(a) General.** The holders of Series L Preferred Stock shall not be entitled to vote on any matter except as set forth in Section 11(b) below or as required by Delaware law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series L Preferred Stock or any other class or series of preferred stock ranking equally with Series L Preferred Stock as to payment of dividends and upon which voting rights equivalent to those granted by this Section 11 have been conferred ("*Voting Parity Securities*") and are exercisable, have not been declared and paid for the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not (a "*Nonpayment*")), the number of directors constituting the Board shall be increased by two, and the Holders of the outstanding shares of Series L Preferred Stock voting as a class with holders of any series of the Corporation's preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist, shall have the right, voting separately as a single class without regard to series, with voting rights allocated *pro rata* based on liquidation preference, to the exclusion of the holders of Common Stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and provided further that the Board shall at no time include more than two such directors. Each such director elected by the holders of shares of Series L Preferred Stock and any Voting Parity Securities is a "*Preferred Director*." Any Preferred Director elected by the holders of the Series L Preferred Stock and any Parity Stock may only be removed by the vote of the holders of record of the outstanding Series L Preferred Stock and any such Parity Stock, voting together as a single and separate class, at a meeting of the Corporation's stockholders called for that purpose. Any vacancy created by the removal of any Preferred Director may be filled only by the vote of the holders of the outstanding Series L Preferred Stock and any such Parity Stock, voting together as a single and separate class.

Notwithstanding the foregoing, without the consent of the Holders, so long as such action does not adversely affect the interests of the Holders, the Corporation may amend, alter, supplement, or repeal any terms of the Series L Preferred Stock for the following purposes:

(1) to cure any ambiguity, or to cure, correct, or supplement any provision contained in this Certificate of Designations that may be ambiguous, defective, or inconsistent; or

(2) to make any provision with respect to matters or questions relating to the Series L Preferred Stock that is not inconsistent with the provisions of this Certificate of Designations.

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the Holders Series L Preferred Stock and any Voting Parity Securities with exercisable voting rights, called as provided herein. At any time after the special voting right has vested pursuant to Section 11(b)(i) above, the secretary of the Corporation may, and upon the written request of any Holder of Series L Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series L Preferred Stock and any Voting Parity Securities with

exercisable voting rights, for the election of the two directors to be elected by them as provided in Section 11(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting will be given in a similar manner to that provided in the Corporation's by-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any Holder of Series L Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 11(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 11(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the Holders of the Series L Preferred Stock (voting together on a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** The voting rights described above will terminate, except as provided by law, upon the earlier of (A) the conversion of all of the Series L Preferred Stock or (B) the payment of full dividends on the Series L Preferred Stock and any other series of the Corporation's preferred stock, if any, for the equivalent of at least four quarterly Dividend Periods (but subject to revesting in the case of any similar non-payment of dividends in respect of future Dividend Periods) following a Nonpayment on the Series L Preferred Stock and any other series of the Corporation's preferred stock. Upon termination of the special voting right described above, the terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series L Preferred Stock (voting together as a single and separate class with holders of any Voting Parity Securities, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist).

#### **Section 12. Fractional Shares.**

(a) No fractional shares of Common Stock will be issued as a result of any conversion of shares of Series L Preferred Stock.

(b) In lieu of any fractional share of Common Stock otherwise issuable in respect of any conversion at the Corporation's option pursuant to Section 5 hereof or any conversion at the option of the Holder pursuant to Section 6(b), Section 6(c) or Section 6(d) hereof, the Corporation shall pay an amount in cash (computed to the nearest cent) equal to the same fraction of the Closing Price of the Common Stock determined as of the second Trading Day immediately preceding the effective date of conversion.

(c) If more than one share of the Series L Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series L Preferred Stock so surrendered.

#### **Section 13. Reservation of Common Stock.**

(a) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock or shares held in the treasury by the Corporation, solely for issuance upon the conversion of shares of Series L Preferred Stock as provided in this Certificate of Designations, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series L Preferred Stock then outstanding, at the Applicable Conversion Price subject to adjustment as described under Section 7. For purposes of this Section 13(a), the number of shares of Common Stock that shall be deliverable upon the conversion of all outstanding shares of Series L Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(b) Notwithstanding the foregoing, the Corporation shall be entitled to deliver upon conversion of shares of Series L Preferred Stock, as herein provided, shares of Common Stock acquired by the Corporation (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(c) All shares of Common Stock delivered upon conversion of the Series L Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

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(d) Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series L Preferred Stock, the Corporation shall use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(e) The Corporation hereby covenants and agrees that, if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national securities exchange or automated quotation system, the Corporation will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all the Common Stock issuable upon conversion of the Series L Preferred Stock; *provided, however*, that if the rules of such exchange or automated quotation system permit the Corporation to defer the listing of such Common Stock until the first conversion of Series L Preferred Stock into Common Stock in accordance with the provisions hereof, the Corporation covenants to list such Common Stock issuable upon conversion of the Series L Preferred Stock in accordance with the requirements of such exchange or automated quotation system at such time.

**Section 14. Preemption.** The Holders of Series L Preferred Stock shall not have any rights of preemption.

**Section 15. Rank.** Notwithstanding anything set forth in the Corporation's Amended and Restated Certificate of Incorporation or this Certificate of Designations to the contrary, the Board, the Committee or any authorized committee of the Board, without the vote of the Holders of the Series L Preferred Stock, may authorize and issue additional shares of Junior Stock, Parity Stock or any class or series of Senior Stock or any other securities ranking senior to the Series L Preferred Stock as to dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 16. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell shares of Series L Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board or any duly authorized committee of the Board may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 17. Unissued or Reacquired Shares.** Shares of Series L Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series and shall be available for subsequent issuance.

**Section 18. No Sinking Fund.** Shares of Series L Preferred Stock are not subject to the operation of a sinking fund.

**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

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.”

“*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 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 *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 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.

#### **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 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 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.

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**(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.

**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

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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 *pro 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.

## 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 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



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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.

**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:

- (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;

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(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

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## 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).

(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 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.

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## 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 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, 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 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.

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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.

**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       | 10000000000             |
| 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]

IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to be executed by a duly authorized officer on this 9th day of December, 2008.

BANK OF AMERICA CORPORATION

By: /s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

**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 distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 1 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 1.

(f) Holders of shares of the Preferred Stock, Series 1, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 1. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 1, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 1, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 1, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 1, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 1, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 1, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 1, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 1, as provided in this Section (3), the holders of Preferred Stock, Series 1 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 1, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 1, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 1, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 1, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 1, may not be redeemed prior to November 28, 2009. On and after November 28, 2009, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 1, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 1 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 1 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 1, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 1, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 1, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation,

after which the holder or holders of such shares of Preferred Stock, Series 1, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 1, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 1, not previously called for redemption by lot or pro rata or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 1 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 1 will have no right to require redemption of any shares of Preferred Stock, Series 1.

(5) Terms Dependent on Regulatory Changes. If, (a) after the date of the issuance of the Preferred Stock, Series 1, the Corporation (by election or otherwise) becomes subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as "Tier 1" in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such "Tier 1" capital (such capital described in either (x) or (y) is referred to below as "Tier 1 Capital"), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 1 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 1 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 1 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation's right to redeem the Preferred Stock, Series 1 on and after November 28, 2009 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation's right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 1 (upon a non-payment of dividends on the Preferred Stock, Series 1) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 1; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 1, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 1 so as to affect the shares of the Preferred Stock, Series 1 adversely.

As used above, the term "Required Unrestricted Tier 1 Provision" means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 1 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 1 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 1 of any such changes in the terms of the Preferred Stock, Series 1 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

(6) Voting Rights. The Preferred Stock, Series 1, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

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The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 1, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 1, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 1, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders. At elections for such directors, each holder of the Preferred Stock, Series 1, shall be entitled to three votes for each share of Preferred Stock, Series 1 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 1, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 1, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 1, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 1, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 1, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 1, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 1, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 1, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 1, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 1, or of the holders thereof;

provided, however, that any increase in the amount of issued Preferred Stock, Series 1 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 1, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 1, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 1, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 1:



(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 1 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 1 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 1.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 1 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 1 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 1, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 1, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 1, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 1, if the holders of such class of stock and the Preferred Stock, Series 1, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 1, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 1, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 2," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D," "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 1, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 1, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 1, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

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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 I]*

**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.

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If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks

provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 2, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 2 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 2, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 2 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 2 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 2 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 2, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 2, all dividends declared upon shares of the Preferred Stock, Series 2, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared *pro rata* so that the amount of dividends declared per share on the Preferred Stock, Series 2, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 2 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 2 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 2 unless full dividends on all outstanding shares of Preferred Stock, Series 2 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 2 in the event that dividends have not been declared or paid on the Preferred Stock, Series 2 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 2 is not paid for any Dividend Period, the holders of Preferred Stock, Series 2 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 2 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 2 if at the same time any arrears exists in the payment of dividends on any outstanding class or series of stock of the Corporation ranking, as to the payment of dividends, prior to the Preferred Stock, Series 2.

(f) Holders of shares of the Preferred Stock, Series 2, shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Preferred Stock, Series 2. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock, Series 2, which may be in arrears.

(3) Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation or proceeds thereof (whether capital or surplus) shall be made to or set apart for the holders of any series or class or classes of stock of the Corporation ranking junior to the Preferred Stock, Series 2, upon liquidation, dissolution, or winding up, the holders of the shares of the Preferred Stock, Series 2, shall be entitled to receive \$30,000 per share plus an amount equal to declared and unpaid dividends, without accumulation of undeclared dividends. If, upon any liquidation, dissolution, or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of the Preferred Stock, Series 2, shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of preferred stock ranking, as to liquidation, dissolution or winding up, on a parity with the Preferred Stock, Series 2, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Preferred Stock, Series 2, and any such other preferred stock ratably in accordance with the respective amounts which would be payable on such shares of Preferred Stock, Series 2, and any such other preferred stock if all amounts payable thereon were paid in full. For the purposes of this Section (3), neither the sale, lease or exchange (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation, nor the consolidation, merger or combination of the Corporation into or with one or more corporations or the consolidation, merger or combination of any other corporation or entity into or with the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation for purposes of this Section (3).

(b) After payment shall have been made in full to the holders of Preferred Stock, Series 2, as provided in this Section (3), the holders of Preferred Stock, Series 2 will not be entitled to any further participation in any distribution of assets of the Corporation. Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Preferred Stock, Series 2, upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Preferred Stock, Series 2, as provided in this Section (3), but not prior thereto, any other series or class or classes of stock ranking junior to the Preferred Stock, Series 2, shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Preferred Stock, Series 2, shall not be entitled to share therein.

(4) Redemption. (a) The Preferred Stock, Series 2, may not be redeemed prior to November 28, 2009. On and after November 28, 2009, the Corporation, at its option, may redeem shares of the Preferred Stock, Series 2, as a whole at any time or in part from time to time, at a redemption price of \$30,000 per share, together in each case with declared and unpaid dividends, without accumulation of any undeclared dividends. The Chief Financial Officer or the Treasurer may exercise the Corporation's right to redeem the Preferred Stock, Series 2 as a whole at any time without further action of the Board of Directors or a duly authorized committee thereof. The Corporation may only elect to redeem the Preferred Stock, Series 2 in part pursuant to a resolution by the Board of Directors or a duly authorized committee thereof.

(b) In the event the Corporation shall redeem shares of Preferred Stock, Series 2, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the redemption date; (2) the number of shares of Preferred Stock, Series 2, to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust, with irrevocable instructions that such funds be applied to the redemption of the shares of Preferred Stock, Series 2, so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be released or repaid to the Corporation, after which the holder or holders

of such shares of Preferred Stock, Series 2, so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender, in accordance with said notice, of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If less than all the outstanding shares of Preferred Stock, Series 2, are to be redeemed, shares to be redeemed shall be selected by the Board of Directors of the Corporation (or a duly authorized committee thereof) from outstanding shares of Preferred Stock, Series 2, not previously called for redemption by lot or *pro rata* or by any other method determined by the Board of Directors of the Corporation (or a duly authorized committee thereof) to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

The Preferred Stock, Series 2 will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Preferred Stock, Series 2 will have no right to require redemption of any shares of Preferred Stock, Series 2.

(5) Terms Dependent on Regulatory Changes. If, (a) the Corporation (by election or otherwise) is subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy which Regulation (x) provides for a type or level of capital characterized as "Tier 1" in, or pursuant to Regulations of any governmental agency, authority or body having regulatory jurisdiction over the Corporation and implementing, the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, or any other United States national governmental agency, authority or body, or (y) provides for a type or level of capital that in the judgment of the Board of Directors (or a duly authorized committee thereof) after consultation with legal counsel of recognized standing is substantially equivalent to such "Tier 1" capital (such capital described in either (x) or (y) is referred to below as "Tier 1 Capital"), and (b) the Board of Directors (or a duly authorized committee thereof) affirmatively elects to qualify the Preferred Stock, Series 2 for such Tier 1 Capital treatment without any sublimit or other quantitative restrictions on the inclusion of such Preferred Stock, Series 2 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) under such Regulations, then, upon such affirmative election, the terms of the Preferred Stock, Series 2 shall automatically be amended to reflect the following modifications (without any action or consent by the holders of the Preferred Stock, Series 2 or any other vote of stockholders of the Corporation):

(i) If and to the extent such modification is a Required Unrestricted Tier 1 Provision (as defined below), the Corporation's right to redeem the Preferred Stock, Series 2 on and after November 28, 2009 pursuant to Section 4 hereof shall be restricted (such restrictions including but not limited to any requirement that the Corporation receive prior approval for such redemption from any applicable governmental agency, authority or body or that such redemption be prohibited);

(ii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, the Corporation's right to make distributions with respect to, or redeem, purchase or acquire or make payments on, securities junior to the Preferred Stock, Series 2 (upon a non-payment of dividends on the Preferred Stock, Series 2) shall become subject to additional restrictions (other than those set forth in Section 2(d) hereof) pursuant to the terms of the Preferred Stock, Series 2; and

(iii) If and to the extent such modification is a Required Unrestricted Tier 1 Provision, any other new provisions or terms shall be added to the Preferred Stock, Series 2, or existing terms shall be modified; provided, however, that no such provision or term shall be added, and no such modification shall be made pursuant to the terms of this Section 5(iii), if it would alter or change the rights, powers or preferences of the shares of the Preferred Stock, Series 2 so as to affect the shares of the Preferred Stock, Series 2 adversely.

As used above, the term "Required Unrestricted Tier 1 Provision" means a term which is, in the written opinion of legal counsel of recognized standing and delivered to the Corporation, required for the Preferred Stock, Series 2 to be treated as Tier 1 Capital of the Corporation without any sublimit or other quantitative restriction on the inclusion of such Preferred Stock, Series 2 in Tier 1 Capital (other than any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Tier 1 Capital) pursuant to the applicable Regulations. The Corporation shall provide notice to holders of any Preferred Stock, Series 2 of any such changes in the terms of the Preferred Stock, Series 2 made pursuant to the terms of this Section 5 on or about the date of effectiveness of any such modification and shall maintain a copy of such notice on file at the principal offices of the Corporation. A copy of the relevant Regulations shall also be on file at the principal offices of the Corporation and, upon request, will be made available to such holders.

(6) Voting Rights. The Preferred Stock, Series 2, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

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The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 2, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 2, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 2, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 2, shall be entitled to three votes for each share of Preferred Stock, Series 2 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them).

Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 2, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 2, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 2, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 2, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 2, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 2, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 2, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 2, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 2, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 2, or of the holders thereof; provided, however, that any increase in the amount of issued Preferred Stock, Series 2 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 2, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 2, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 2, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 2:



(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 2 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 2 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 2.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 2 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 2 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 2, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 2, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 2, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 2, if the holders of such class of stock and the Preferred Stock, Series 2, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 2, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 2, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "Floating Rate Non-Cumulative Preferred Stock, Series 5," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D," "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 2, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 2, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 2, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

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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 2]*

**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

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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 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 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 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.

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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 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."

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 3]*

**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**

**Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 4  
(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 4**

(1) Number of Shares and Designation. 20,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 4 (hereinafter called the "Preferred Stock, Series 4").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 4, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 28, May 28, August 28 and November 28 (the "Payment Dates") commencing on February 28, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 4, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means a day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 28, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 4, for each Dividend Period shall be a floating rate *per annum* equal to three-month U.S. dollar LIBOR plus 0.75%, but in no event will the rate be less than 4.00% *per annum*, of the \$30,000 liquidation preference per share of Preferred Stock, Series 4.

The "three-month U.S. dollar LIBOR", with respect to a Dividend Period, means the rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three month period that normally appears on Moneyline Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Moneyline Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on

the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 4, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 4 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 4, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 4 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 4 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 4 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 4, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 4, all dividends declared upon shares of the Preferred Stock, Series 4, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared *pro rata* so that the amount of dividends declared per share on the Preferred Stock, Series 4, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 4 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 4 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 4 unless full dividends on all outstanding shares of Preferred Stock, Series 4 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 4 in the event that dividends have not been declared or paid on the Preferred Stock, Series 4 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 4 is not paid for any Dividend Period, the holders of Preferred Stock, Series 4 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 4 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 4 if at the same time any 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 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]*

**BANK OF AMERICA CORPORATION**

**CERTIFICATE OF DESIGNATIONS**  
**Pursuant to Section 151 of the**  
**General Corporation Law of the State of Delaware**

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 5**  
**(Par Value \$0.01 Per Share)**

Bank of America Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that the following resolutions were adopted by the Board of Directors of the Corporation (the "Board of Directors") pursuant to the authority of the Board of Directors as conferred by Section 151 of the General Corporation Law of the State of Delaware, at a meeting duly convened and held on December 9, 2008:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors by the Amended and Restated Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Corporation's previously authorized preferred stock, par value \$0.01 per share (the "Preferred Stock"), and hereby states the designation and number of shares thereof and establishes the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, as follows:

**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES 5**

(1) Number of Shares and Designation. 50,000 shares of the preferred stock, par value \$0.01 per share, of the Corporation are hereby constituted as a series of preferred stock, par value \$0.01 per share, designated as Floating Rate Non-Cumulative Preferred Stock, Series 5 (hereinafter called the "Preferred Stock, Series 5").

(2) Dividends. (a) The holders of shares of the Preferred Stock, Series 5, shall be entitled to receive, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), out of assets of the Corporation legally available under Delaware law for the payment of dividends, non-cumulative cash dividends at the rate set forth below in this Section (2) applied to the amount of \$30,000 per share. Such dividends shall be payable quarterly, in arrears, as, if and when declared by the Board of Directors of the Corporation (or a duly authorized committee thereof), on February 21, May 21, August 21 and November 21 (the "Payment Dates") commencing on February 21, 2009; provided that if any such Payment Date is not a New York Business Day and London Business Day, the Payment Date will be the next succeeding day that is a New York Business Day and London Business Day, unless such day falls in the next calendar month, in which case the Payment Date will be the immediately preceding New York Business Day and London Business Day. Each such dividend shall be payable to the holders of record of shares of the Preferred Stock, Series 5, as they appear on the stock register of the Corporation on such record dates, which shall be a date not more than 30 days nor less than 10 days preceding the applicable Payment Dates, as shall be fixed by the Board of Directors of the Corporation (or a duly authorized committee thereof). "London Business Day" means any day other than a Saturday or Sunday on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market. A "New York Business Day" means any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or obligated by law or executive order to be closed.

(b) (i) Dividend periods ("Dividend Periods") shall commence on each Payment Date (other than the initial Dividend Period which shall be deemed to have commenced on November 21, 2008) and shall end on and exclude the next succeeding Payment Date. The dividend rate on the shares of Preferred Stock, Series 5 for each Dividend Period shall be a floating rate per annum equal to three-month U.S. dollar LIBOR plus .50%, but in no event will the rate be less than 4.00% per annum, of the \$30,000 liquidation preference per share of Preferred Stock, Series 5.

The "three-month U.S. dollar LIBOR", with respect to a Dividend Period, means the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a three month period that normally appears on Telerate Page 3750, as displayed on page "BBAM" (British Bankers Association Official BBA LIBOR Fixings) in the Bloomberg Professional Service (or any other service that may replace Telerate, Inc. on page BBAM or any other page that may replace page BBAM on the Bloomberg Professional Service or a successor service, in each case, for the purpose of displaying London interbank offered rates of major banks) as of 11:00 a.m. (London time) on the second London Business Day immediately preceding the first day of such Dividend Period.

If three-month U.S. dollar LIBOR cannot be determined as described above, the Corporation will select four major banks in the London interbank market. The Corporation will request that the principal London offices of those four selected banks provide their offered quotations to prime banks in the London interbank market at approximately 11:00 a.m., London time, on the second London Business Day immediately preceding the first day of such Dividend Period. These quotations will be for deposits in U.S. dollars for a three month period. Offered quotations must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time.

If two or more quotations are provided, three-month U.S. dollar LIBOR for the Dividend Period will be the arithmetic mean of the quotations. If fewer than two quotations are provided, the Corporation will select three major banks in New York City and will then determine three-month U.S. dollar LIBOR for the Dividend Period as the arithmetic mean of rates quoted by those three major banks in New York City to leading European banks at approximately 3:00 p.m., New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period. The rates quoted will be for loans in U.S. dollars, for a three month period. Rates quoted must be based on a principal amount equal to an amount that is representative of a single transaction in U.S. dollars in the market at the time. If fewer than three New York City banks selected by the Corporation are quoting rates, three-month U.S. dollar LIBOR for the applicable period will be the same as for the immediately preceding Dividend Period.

(ii) Dividends on the Preferred Stock, Series 5, shall (if and when declared, as herein provided) be computed on the basis of a 360-day year and the actual number of days elapsed in each Dividend Period. Accordingly, the amount of dividends payable per share for each Dividend Period (including the initial Dividend Period) for the Preferred Stock, Series 5 shall (if and when declared, as herein provided) equal the product of (i) the applicable dividend rate, (ii) \$30,000 and (iii) a fraction (A) the numerator of which will be the actual number of days elapsed in such Dividend Period, and (B) the denominator of which will be 360. The amount of dividends payable on the Preferred Stock, Series 5, shall be rounded to the nearest cent, with one-half cent being rounded upwards.

(c) So long as any shares of the Preferred Stock, Series 5 are outstanding, the Corporation may not declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire (except for purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such stock), or make a liquidation payment with respect to the preferred stock of the Corporation of any series and any other stock of the Corporation ranking, as to dividends, on a parity with the Preferred Stock, Series 5 unless for such Dividend Period full dividends on all outstanding shares of Preferred Stock, Series 5 have been declared, paid or set aside for payment. When dividends are not paid in full, as aforesaid, upon the shares of the Preferred Stock, Series 5, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends with the Preferred Stock, Series 5, all dividends declared upon shares of the Preferred Stock, Series 5, and any other preferred stock and other stock of the Corporation ranking on a parity as to dividends (whether cumulative or non-cumulative) shall be declared pro rata so that the amount of dividends declared per share on the Preferred Stock, Series 5, and all such other stock of the Corporation shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Preferred Stock, Series 5 (but without, in the case of any non-cumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods) and all such other stock bear to each other.

(d) So long as any shares of the Preferred Stock, Series 5 are outstanding, the Corporation may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any Common Stock or any other stock of the Corporation ranking as to dividends or distribution of assets junior to the Preferred Stock, Series 5 unless full dividends on all outstanding shares of Preferred Stock, Series 5 have been declared, paid or set aside for payment for the immediately preceding Dividend Period (except for (x) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation, (y) redemptions or purchases of any rights pursuant to the Amended and Restated Rights Agreement, adopted on December 2, 1997 or any agreement that replaces such Amended and Restated Rights Agreement, or by conversion or exchange for the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation and (z) purchases by the Corporation or its affiliates in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock); provided, however, that the foregoing dividend preference shall not be cumulative and shall not in any way create any claim or right in favor of the holders of Preferred Stock, Series 5 in the event that dividends have not been declared or paid on the Preferred Stock, Series 5 in respect of any prior Dividend Period. If the full dividend on the Preferred Stock, Series 5 is not paid for any Dividend Period, the holders of Preferred Stock, Series 5 will have no claim in respect of the unpaid amount so long as no dividend (other than those referred to above) is paid on the Common Stock or other of the Corporation's capital stock ranking junior to Preferred Stock, Series 5 as to dividends and distribution of assets upon dissolution, liquidation or winding up of the Corporation.

(e) No dividends may be declared or paid or set aside for payment on any shares of Preferred Stock, Series 5 if at the same time any 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.

(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.

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(6) Voting Rights. The Preferred Stock, Series 5, shall have no voting rights, except as hereinafter set forth or as otherwise from time to time required by law.

The holders of the Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class. Each share of Preferred Stock shall be entitled to 150 votes.

Whenever dividends payable on the Preferred Stock, Series 5, have not been declared or paid for such number of Dividend Periods, whether or not consecutive, which in the aggregate is equivalent to six Dividend Periods (a "Nonpayment"), the holders of outstanding shares of the Preferred Stock, Series 5, shall have the exclusive right, voting as a class with holders of shares of all other series of preferred stock ranking on a parity with the Preferred Stock, Series 5, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable (to the extent such other series of preferred stock are entitled to vote pursuant to the terms thereof), to vote for the election of two additional directors at the next annual meeting of stockholders and at each subsequent annual meeting of stockholders on the terms set forth below. At elections for such directors, each holder of the Preferred Stock, Series 5, shall be entitled to three votes for each share of Preferred Stock, Series 5 held (the holders of shares of any other series of preferred stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of such holders, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of such outstanding shares of Preferred Stock, Series 5, (either alone or together with the holders of shares of all other series of preferred stock ranking on such a parity) as hereinafter set forth. The right of such holders of such shares of the Preferred Stock, Series 5, voting as a class with holders of shares of all other series of preferred stock ranking on such a parity, to elect members of the Board of Directors of the Corporation as aforesaid shall continue until all dividends on such shares of Preferred Stock, Series 5, shall have been paid in full for at least four Dividend Periods following the Nonpayment. Upon payment in full of such dividends, such voting rights shall terminate except as expressly provided by law, subject to re-vesting in the event of each and every subsequent Nonpayment in the payment of dividends as aforesaid.

Upon termination of the right of the holders of the Preferred Stock, Series 5, to vote for directors as provided in the previous paragraph, the term of office of all directors then in office elected by such holders will terminate immediately. If the office of any director elected by such holders voting as a class becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining director elected by such holders voting as a class may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Whenever the term of office of the directors elected by such holders voting as a class shall end and the special voting rights shall have expired, the number of directors shall be such number as may be provided for in the By-laws irrespective of any increase made pursuant to the provisions hereof.

So long as any shares of the Preferred Stock, Series 5, remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares of the Preferred Stock, Series 5, outstanding at the time (voting as a class with all other series of preferred stock ranking on a parity with the Preferred Stock, Series 5, either as to dividends or the distribution of assets upon liquidation, dissolution or winding up and upon which like voting rights have been conferred and are exercisable), given in person or by proxy, either in writing or at any meeting called for the purpose, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount, of any class or series of stock ranking prior to the Preferred Stock, Series 5, with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up; or

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Amended and Restated Certificate of Incorporation, as amended, or of the resolutions set forth in a Certificate of Designations for such Preferred Stock, Series 5, which would adversely affect any right, preference, privilege or voting power of the Preferred Stock, Series 5, or of the holders thereof; provided, however, that any increase in the amount of issued Preferred Stock, Series 5 or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock, in each case ranking on a parity with or junior to the Preferred Stock, Series 5, with respect to the payment of dividends (whether such dividends were cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers.

Without the consent of the holders of the Preferred Stock, Series 5, so long as such action does not adversely affect the interests of holders of Preferred Stock, Series 5, the Corporation may amend, alter, supplement or repeal any terms of the Preferred Stock, Series 5:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in a Certificate of Designations for such Preferred Stock, Series 5 that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Preferred Stock, Series 5 that is not inconsistent with the provisions of a Certificate of Designations for such Preferred Stock, Series 5.

The rules and procedures for calling and conducting any meeting of the holders of Preferred Stock, Series 5 (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents, and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors of the Corporation, or a duly authorized committee thereof, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of any national securities exchange on which the Preferred Stock, Series 5 are listed at the time.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Preferred Stock, Series 5, shall have been redeemed or sufficient funds shall have been deposited in trust to effect such a redemption which is scheduled to be consummated within three months after the time that such rights would otherwise be exercisable.

(7) Record Holders. The Corporation and the transfer agent for the Preferred Stock, Series 5, may deem and treat the record holder of any share of such Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(8) Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) on a parity with the Preferred Stock, Series 5, as to dividends or as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, Series 5, if the holders of such class of stock and the Preferred Stock, Series 5, shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates (whether cumulative or non-cumulative) or liquidation prices, without preference or priority one over the other; and

(ii) junior to the Preferred Stock, Series 5, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Preferred Stock, Series 5, shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

(iii) The Shares of Preferred Stock of the Corporation designated "Floating Rate Non-Cumulative Preferred Stock, Series 1," "Floating Rate Non-Cumulative Preferred Stock, Series 2," "6.375% Non-Cumulative Preferred Stock, Series 3," "Floating Rate Non-Cumulative Preferred Stock, Series 4," "6.70% Non-Cumulative Perpetual Preferred Stock, Series 6," "6.25% Non-Cumulative Perpetual Preferred Stock, Series 7," "8.625% Non-Cumulative Preferred Stock, Series 8," "Cumulative Redeemable Preferred Stock, Series B," "Floating Rate Non-Cumulative Preferred Stock, Series E," "6.204% Non-Cumulative Preferred Stock, Series D" "Floating Rate Non-Cumulative Preferred Stock, Series F," "Adjustable Rate Non-Cumulative Preferred Stock, Series G," "8.20% Non-Cumulative Preferred Stock, Series H," "6.625% Non-Cumulative Preferred Stock, Series I," "7.25% Non-Cumulative Preferred Stock, Series J," "7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L," "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K," and "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M," and any other class or series of stock of the Corporation hereafter authorized that ranks on parity with the Preferred Stock, Series 5, as to dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, shall be deemed to rank on a parity with the shares of the Preferred Stock, Series 5, as to dividends and distribution of assets upon the liquidation, dissolution or winding up of the Corporation.

(9) Exclusion of Other Rights. Unless otherwise required by law, shares of Preferred Stock, Series 5, shall not have any rights, including preemptive rights, or preferences other than those specifically set forth herein or as provided by applicable law.

(10) Notices. All notices or communications unless otherwise specified in the By-laws of the Corporation or the Amended and Restated Certificate of Incorporation, as amended, shall be sufficiently given if in writing and delivered in person or by first class mail, postage prepaid. Notice shall be deemed given on the earlier of the date received or the date such notice is mailed.

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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 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.

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.

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 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 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.

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.

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 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 7]*

**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.

(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

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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 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 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 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



(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.

(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."

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.
- (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]*

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 7th 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).

(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

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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).

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 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, 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

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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.

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(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.

*[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 16th 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).

(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

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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

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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. 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 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).

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 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, 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

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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  
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

By: /s/ TERESA M. BRENNER

Name: Teresa M. Brenner

Title: Associate General Counsel

**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.

"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, \$0.01 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.

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“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).

“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

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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 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.

(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 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 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. 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.

(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 vesting 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).

## 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.

## 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

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(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 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:

| <u>Class</u> | <u>Number of Shares</u> |
|--------------|-------------------------|
| 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



**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 Twelve Billion Nine Hundred Million (12,900,000,000), divided into the following classes:

| <u>Class</u> | <u>Number of Shares</u> |
|--------------|-------------------------|
| Common       | 12,800,000,000          |
| 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 28<sup>th</sup> day of April, 2010.

By: /s/ TERESA M. BRENNER  
Name: Teresa M. Brenner  
Title: Associate General Counsel

**CERTIFICATE OF DESIGNATIONS  
OF  
6% CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES T  
OF  
BANK OF AMERICA CORPORATION**

**BANK OF AMERICA CORPORATION**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Sections 103 and 151 thereof, DOES HEREBY CERTIFY:

The board of directors of the Corporation (the "Board of Directors"), in accordance with the provisions of the amended and restated certificate of incorporation of the Corporation and applicable law, at a meeting duly called and held on August 25, 2011, adopted the following resolution creating a series of 50,000 shares of Preferred Stock of the Corporation designated as "6% Cumulative Perpetual Preferred Stock, Series T".

**RESOLVED**, that pursuant to the authority vested in the Board of Directors, the provisions of the amended and restated certificate of incorporation 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, of the shares of such series, are as follows:

Section 1. Designation. The distinctive serial designation of such series of Preferred Stock is "6% Cumulative Perpetual Preferred Stock, Series T" ("Series T"). Each share of Series T shall be identical in all respects to every other share of Series T.

Section 2. Number of Shares. The authorized number of shares of Series T shall be 50,000. Shares of Series T that are redeemed, purchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series T may be reissued only as shares of any now or hereafter designated series other than Series T).

Section 3. Definitions. As used herein with respect to Series T:

- (a) "Bylaws" means the amended and restated bylaws of the Corporation, as they may be amended from time to time.
- (b) "Business Day" means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York City generally are authorized or obligated by law, regulation or executive order to close.
- (c) "Certificate of Designations" means this Certificate of Designations relating to the Series T, as it may be amended from time to time.
- (d) "Certification of Incorporation" shall mean the amended and restated certificate of incorporation of the Corporation, as it may be amended from time to time, and shall include this Certificate of Designations.
- (e) "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.
- (f) "Junior Stock" means the Common Stock and any other class or series of stock of the Corporation (other than Series T) that ranks junior to Series T either or both as to the payment of dividends and/or as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation.
- (g) "Original Issue Date" means September 1, 2011.

(h) "Parity Stock" means any class or series of stock of the Corporation (other than Series T) that ranks equally with Series T both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation's (i) 7% Cumulative Redeemable Preferred Stock, Series B, (ii) 6.204% Non-Cumulative Preferred Stock, Series D, (iii) Floating Rate Non-Cumulative Preferred Stock, Series E, (iv) Floating Rate Non-Cumulative Preferred Stock, Series F, (v) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (vi) 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) Fixed Rate Cumulative Perpetual Preferred Stock, Series Q, (xiv) Fixed Rate Cumulative Perpetual Preferred Stock, Series R, (xv) Floating Rate Non-Cumulative Preferred Stock, Series 1, (xvi) Floating Rate Non-Cumulative Preferred Stock, Series 2, (xvii) 6.375% Non-Cumulative Preferred Stock, Series 3, (xviii) Floating Rate Non-Cumulative Preferred Stock, Series 4, (xix) Floating Rate Non-Cumulative Preferred Stock, Series 5, (xx) 6.70% Noncumulative Perpetual Preferred Stock, Series 6, (xxi) 6.25% Noncumulative Perpetual Preferred Stock, Series 7 and (xxii) 8.625% Non-Cumulative Preferred Stock, Series 8.

(i) "Preferred Stock" means any and all series of preferred stock of the Corporation, including the Series T.

(j) "Voting Parity Stock" means, with regard to any matter as to which the holders of Series T are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

(k) "Voting Preferred Stock" means, with regard to any matter as to which the holders of Series T are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series T) that rank equally with Series T either as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation and upon which like voting rights have been conferred and are exercisable with respect to such matter.

#### Section 4. Dividends.

(a) Rate. Holders of Series T shall be entitled to receive, on each share of Series T, out of funds legally available for the payment of dividends under Delaware law, cumulative cash dividends with respect to each Dividend Period (as defined below) at a per annum rate of 6% (as such may be adjusted pursuant to this Section 4(a), the "Dividend Rate") on (i) the amount of \$100,000 per share of Series T and (ii) the amount of accrued and unpaid dividends on such share of Series T, if any (giving effect to (A) any dividends paid through the Dividend Payment Date (as defined below) that begins such Dividend Period (other than the initial Dividend Period) and (B) any dividends (including dividends thereon at a per annum rate equal to the Dividend Rate to the date of payment) paid during such Dividend Period); *provided* that if, on any Dividend Payment Date, the holder of record (for such Dividend Payment Date) of a share of Series T shall not have received in cash the full amount of any dividend required to be paid on such share on such Dividend Payment Date pursuant to this Section 4(a), then the Dividend Rate shall automatically be at a per annum rate of 8% with respect to the Dividend Period for which the full amount of any dividend required to be paid on such share on such Dividend Payment Date pursuant to this Section 4(a) was not made and for all Dividend Periods thereafter. Dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each 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 in arrears (as provided below in this Section 4(a)), but only when, as and if declared by the Board of Directors (or a duly authorized committee of the Board of Directors) on each October 10, January 10, April 10 and July 10 (each, a "Dividend Payment Date"), commencing on October 10, 2011; *provided* that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series T on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day. Dividends payable on the Series T in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on the Series T on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Series T on any Dividend Payment Date will be payable to holders of record of Series T as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day before such Dividend Payment Date (as originally scheduled) or such other record date fixed by the Board of Directors (or a duly authorized committee of the Board of Directors) that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Each dividend period (a "Dividend Period") shall commence on and include a Dividend Payment Date (other than the initial Dividend Period, which shall commence on and include the Original Issue Date of the Series T) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable in respect of a Dividend Period shall be payable in arrears on the first Dividend Payment Date after such Dividend Period.

Holders of Series T shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on the Series T as specified in this Section 4 (subject to the other provisions of this Certificate of Designations).

(b) Priority of Dividends. So long as any share of Series T remains outstanding, no dividend shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than a dividend payable solely in Junior Stock), and no Common Stock, Junior Stock or Parity Stock shall be purchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock or of one share of Parity Stock for or into another share of Parity Stock (with the same or lesser per share liquidation amount) or Junior Stock) during a Dividend Period, unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 4(a) above, dividends on such amount), on all outstanding shares of Series T have been or are contemporaneously declared and paid in full (or declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Series T on the applicable record date). The foregoing provision shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the cashless exercises and similar actions under any employee benefit plan in the ordinary course of business and consistent with past practice prior to the Original Issuance Date; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business; (iii) in connection with the issuance of Junior Stock or Parity Stock, ordinary sale and repurchase transactions to facilitate the distribution of such Junior Stock or Parity Stock; and (iv) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of, and at the ultimate cost of, any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon the Series T and any shares of Parity Stock, all dividends declared on the Series T and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the Series T (including, if applicable as provided in Section 4(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) bear to each other.

Subject to the foregoing, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors (or a duly authorized committee of the Board of Directors) may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and the Series T shall not be entitled to participate in any such dividends.

#### Section 5. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Series T shall be entitled to receive for each share of Series T, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, and after satisfaction of all liabilities and obligations to creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to the Series T as to such distribution, payment in full in an amount equal to the sum of (i) \$100,000 per share and (ii) the accrued and unpaid dividends thereon (including, if applicable as provided in Section 4(a) above, dividends on such amount), whether or not declared, to the date of payment. Furthermore, without limiting in any way the obligation of the Corporation to make the payments specified in the immediately preceding sentence, in connection with the payment of the amounts specified in clause (ii) of the immediately preceding sentence, the Corporation shall use its best efforts to ensure that, immediately prior to any such liquidation, dissolution or winding up, the Corporation shall declare and pay any accrued and unpaid dividends (including, if applicable as provided in Section 4(a) above, dividends on such amount) outstanding as of such time.

(b) Partial Payment. If in any distribution described in Section 5(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay the Liquidation Preferences (as defined below) in full to all holders of Series T and all holders of any stock of the Corporation ranking equally with the Series T as to such distribution, the amounts paid to the holders of Series T and to the holders of all such other stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series T and the holders of all such other stock. In any such distribution, the "Liquidation Preference" of any holder of stock of the Corporation shall mean the amount otherwise payable to such holder in such distribution (assuming no limitation on the assets of the Corporation available for such distribution), including an amount equal to any declared but unpaid dividends (and, in the case of any holder of stock, including the Series T, on which dividends accrue on a cumulative basis, an amount equal to any accrued and unpaid dividends (including, if applicable, dividends on such amount), whether or not declared, as applicable), *provided* that the Liquidation Preference for any share of Series T shall be determined in accordance with Section 5(a) above.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Series T, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 5, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series T receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

#### Section 6. Redemption.

(a) Optional Redemption. The Corporation, at its option, subject to the approval of the Board of Governors of the Federal Reserve System, may redeem, in whole at any time or in part from time to time, the shares of Series T at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to the sum of (i) \$105,000 per share and (ii) the accrued and unpaid dividends thereon (including, if applicable as provided in Section 4(a) above, dividends on such amount), whether or not declared, to the redemption date. Without limiting in any way the obligation of the Corporation to make the payments specified in the immediately preceding sentence, in connection with the payment of the amounts specified in clause (ii) of the immediately preceding sentence, the Corporation shall use its best efforts to ensure that, immediately prior to any such redemption, the Corporation shall declare and pay any accrued and unpaid dividends (including, if applicable as provided in Section 4(a) above, dividends on such amount) outstanding as of such time. The minimum number of shares of Series T redeemable at any time is the lesser of (x) 10,000 shares of Series T and (y) the number of shares of Series T outstanding. The redemption price for any shares of Series T shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 4 above.

(b) No Sinking Fund. The Series T will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series T will have no right to require redemption of any shares of Series T.

(c) Notice of Redemption. Notice of every redemption of shares of Series T shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series T designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series T. Notwithstanding the foregoing, if the Series T are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series T at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Series T to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notwithstanding anything to the contrary herein, upon receipt of any notice of redemption hereunder, the holder of any share of Series T outstanding at such time shall have five (5) Business Days to deliver to the Corporation written notice of its election to pay some or all of the applicable exercise price with respect to an exercise, in whole or in part, of such holder's rights under any warrant to purchase Common Stock of the Corporation originally issued by the Corporation in connection with the issuance of the Series T by means of a surrender to the Corporation of shares of the Series T in accordance with the terms and conditions hereof and of any such warrant, and the Corporation's right to redeem the shares of Series T specified in such notice of redemption shall be (x) tolled during such five (5) Business Day period and (y) if the holder so elects to exercise such warrant and surrender such shares of Series T, in whole or in part, automatically terminated only with respect to such shares of Series T to be so surrendered.

(d) Partial Redemption. In case of any redemption of part of the shares of Series T at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Corporation may determine to be fair and equitable. Subject to the provisions hereof, the Corporation shall have full power and authority to prescribe the terms and conditions upon which shares of Series T shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$50 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

Section 7. Conversion. Holders of Series T shares shall have no right to exchange or convert such shares into any other securities, except in connection with the surrender to the Corporation of shares of the Series T to satisfy any portion of the applicable exercise price with respect to an exercise, in whole or in part, of any warrant to purchase Common Stock of the Corporation issued in connection with the original issuance of the Series T by the Corporation.

#### Section 8. Voting Rights.

(a) General. The holders of Series T shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Class Voting Rights as to Particular Matters. So long as any shares of Series T are outstanding, in addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, the vote or consent of the holders of at least 66 2/3% of the shares of Series T and any Voting Preferred Stock at the time outstanding and entitled to vote thereon,

voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation ranking senior to the Series T with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Series T. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to materially and adversely affect the special rights, preferences, privileges or voting powers of the Series T, taken as a whole; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Series T, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series T remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series T immediately prior to such consummation, taken as a whole; *provided, however*, that for all purposes of this Section 8(b), any increase in the amount of the authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series T with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series T.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8 (b) would adversely affect the Series T and one or more but not all other series of Preferred Stock, then only the Series T and such series of Preferred Stock as are adversely affected by and entitled to vote on the matter shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8 (b) would adversely affect the Series T but would not similarly adversely affect all other series of Voting Parity Stock, then only the Series T and each other series of Voting Parity Stock as is similarly adversely affected by and entitled to vote on the matter, if any, shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

(c) Series T Voting Rights as to Particular Matters. In addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, so long as at least 10,000 shares of Series T are outstanding, the vote or consent of the holders of at least 50.1% of the shares of Series T at the time outstanding, voting in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization or Issuance of Senior Stock. Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation, or the issuance of any shares of any class or series of capital stock of the Corporation, in each case, ranking senior to the Series T with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Series T. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to affect or change the rights, preferences, privileges or voting powers of the Series T so as not to be substantially similar to those in effect immediately prior to such amendment, alteration or repeal; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Series T, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series T remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof as are substantially similar to the rights, preferences, privileges and voting powers, and limitations and restrictions of the Series T immediately prior to such consummation; *provided, however*, that for all purposes of this Section 8 (c), the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series T with respect to

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the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series T.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Series T shall be required pursuant to Section 8(b) or (c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series T (or, in the case of Section 8(c), more than 40,000 shares of Series T) shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 6 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Series T (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors (or a duly authorized committee of the Board of Directors), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which the Series T is listed or traded at the time. Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Series T and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series T are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amount of the shares voted or covered by the consent (*provided* that the specified liquidation amount for any share of Series T shall be the Liquidation Preference for such share) as if the Corporation were liquidated on the record date for such vote or consent, if any, or, in the absence of a record date, on the date for such vote or consent.

Section 9. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series T may deem and treat the record holder of any share of Series T as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 10. Notices. All notices or communications in respect of Series T shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law. Notwithstanding the foregoing, if the Series T are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Series T in any manner permitted by such facility.

Section 11. No Preemptive Rights. No share of Series T shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 12. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

Section 13. Surrender Rights. In connection with the exercise of any rights under any warrant to purchase Common Stock of the Corporation issued in connection with the original issuance of the Series T, a holder of shares of Series T shall have the right to pay some or all of the applicable exercise price with respect to an exercise, in whole or in part, of such holder's rights under any such warrant by means of a surrender to the Corporation of the applicable amount shares of the Series T.

Section 14. Other Rights. The shares of Series T shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.



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IN WITNESS WHEREOF, BANK OF AMERICA CORPORATION has caused this certificate to be signed by its duly authorized officer this 3<sup>rd</sup> day of August, 2011.

**BANK OF AMERICA CORPORATION**

By: /s/ MARK D. LINSZ

Name: Mark D. Linsz

Title: Corporate Treasurer

**CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES U  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Series U Final Terms Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on May 21, 2013, in accordance with Section 141(f) of the General Corporation Law:

**Resolved**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 20, 2013, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U” (the “*Series U Preferred Stock*”). Each share of Series U Preferred Stock shall be identical in all respects to every other share of Series U Preferred Stock. Series U Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series U Preferred Stock shall be 40,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series U Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series U Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series U Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series U Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series U Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series U Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official

pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series U Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series U Preferred Stock then outstanding as “Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series U Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series U Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) 7.25% Non-Cumulative Preferred Stock, Series J, (h) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (i) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (j) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (k) 6% Cumulative Perpetual Preferred Stock, Series T, (l) Floating Rate Non-Cumulative Preferred Stock, Series 1, (m) Floating Rate Non-Cumulative Preferred Stock, Series 2, (n) 6.375% Non-Cumulative Preferred Stock, Series 3, (o) Floating Rate Non-Cumulative Preferred Stock, Series 4, (p) Floating Rate Non-Cumulative Preferred Stock, Series 5, (q) 6.70% Noncumulative Perpetual Preferred Stock, Series 6, (r) 6.25% Noncumulative Perpetual Preferred Stock, Series 7, (s) 8.625% Non-Cumulative Preferred Stock, Series 8, and (t) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series U Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series U Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series U Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will

request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series U Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series U Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series U Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on June 1 and December 1 of each year, beginning on December 1, 2013, and (y) for the Floating Rate Period, quarterly in arrears on each March 1, June 1, September 1 and December 1, beginning on September 1, 2023; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to June 1, 2023, without any interest or other payment in respect of such delay, and (ii) after June 1, 2023, with dividends accruing to the actual payment date (each such day on which dividends are payable a "Dividend Payment Date"). The period from, and including, the date of issuance of the Series U Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period." Dividends on each share of Series U Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 5.200%, for each Dividend Period from the issue date to, but excluding, June 1, 2023 (the "Fixed Rate Period"), and (2) thereafter, Three-Month LIBOR plus a spread of 3.135%, for each Dividend Period from, and including, June 1, 2023 (the "Floating Rate Period"). The record date for payment of dividends on the Series U Preferred Stock shall be the fifteenth day of the calendar month immediately preceding the month in which the Dividend Payment Date falls. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series U Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series U Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series U Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series U Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series U Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series U Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in

each case unless full dividends on all outstanding shares of Series U Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series U Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series U Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series U Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series U Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series U Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series U Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series U Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series U Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series U Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series U Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series U Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series U Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series U Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series U Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series U Preferred Stock at the time outstanding, at any time on or after the Dividend Payment Date on June 1 2023, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series U Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provide below) dividends that have accrued but

have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series U Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series U Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series U Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series U Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series U Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series U Preferred Stock at the time outstanding, the shares of Series U Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series U Preferred Stock in proportion to the number of Series U Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors or any duly authorized committee of the Board of Directors may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series U Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series U Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

#### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series U Preferred Stock or any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series U Preferred Stock

(together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of the such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series U Preferred Stock and any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series U Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series U Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series U Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series U Preferred Stock and any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series U Preferred Stock may (at our expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of our stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series U Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series U Preferred Stock and any other class or series of preferred stock that ranks on parity with Series U Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series U Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series U Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series U Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least of the voting power of the Series U Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series U Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any

obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series U Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least of the shares of the Series U Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series U Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series U Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which (A) the shares of the Series U Preferred Stock remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series U Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series U Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series U Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series U Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series U Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series U Preferred Stock shall not have any rights of preemption or rights to convert such Series U Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series U Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series U Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series U Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series U Preferred Stock are not subject to the operation of a sinking fund.



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**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designation to be executed by its duly authorized officer on this 21st day of May, 2013.

**BANK OF AMERICA CORPORATION**

By:           /s/ ROSS E. JEFFRIES JR.            
Name: Ross E. Jeffries, Jr.  
Title: Corporate Secretary and Associate General Council

CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF DESIGNATIONS

OF

6% NON-CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES T

OF

BANK OF AMERICA CORPORATION

Pursuant to Section 242

of the General Corporation Law of the State of Delaware

**BANK OF AMERICA CORPORATION**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Certificate of Designations of the Corporation's 6% Cumulative Perpetual Preferred Stock, Series T, which was previously filed with the Secretary of State of the State of Delaware on August 31, 2011, is hereby amended and restated in its entirety to read as follows:

Section 1. Designation. The distinctive serial designation of such series of Preferred Stock, par value \$0.01 per share, is "6% Non-Cumulative Perpetual Preferred Stock, Series T" ("Series T"). Each share of Series T shall be identical in all respects to every other share of Series T.

Section 2. Number of Shares. The authorized number of shares of Series T shall be 50,000. Shares of Series T that are redeemed, purchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series T may be reissued only as shares of any now or hereafter designated series other than Series T).

Section 3. Definitions. As used herein with respect to Series T:

(a) "Amendment Effective Date" means May 7, 2014.

(b) "Bylaws" means the amended and restated bylaws of the Corporation, as they may be amended from time to time.

(c) "Business Day" means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York City generally are authorized or obligated by law, regulation or executive order to close.

(d) "Certificate of Designations" means this Certificate of Designations relating to the Series T, as it may be amended from time to time.

(e) "Certification of Incorporation" shall mean the amended and restated certificate of incorporation of the Corporation, as it may be amended from time to time, and shall include this Certificate of Designations.

(f) "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.

(g) "Junior Stock" means the Common Stock and any other class or series of stock of the Corporation (other than Series T) that ranks junior to Series T either or both as to the payment of dividends and/or as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(h) "Original Issue Date" means September 1, 2011.

(i) "Parity Stock" means any class or series of stock of the Corporation (other than Series T) that ranks equally with Series T both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation's (i) 7% Cumulative Redeemable Preferred Stock, Series B, (ii) 6.204% Non-Cumulative Preferred Stock, Series D, (iii) Floating Rate Non-Cumulative Preferred Stock, Series E, (iv) Floating Rate Non-Cumulative Preferred Stock, Series F, (v) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (vi) 6.625% Non-Cumulative Preferred Stock, Series I, (vii) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (viii) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (ix) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (x) Fixed-to-Floating Rate Semi-Annual Non-Cumulative Preferred Stock, Series U, (xi) Floating Rate Non-Cumulative Preferred Stock, Series 1, (xii) Floating Rate Non-Cumulative Preferred Stock, Series 2, (xiii) 6.375% Non-Cumulative Preferred Stock, Series 3, (xiv) Floating Rate Non-Cumulative Preferred Stock, Series 4 and (xv) Floating Rate Non-Cumulative Preferred Stock, Series 5.

(j) "Preferred Stock" means any and all series of preferred stock of the Corporation, including the Series T.

(k) "Voting Parity Stock" means, with regard to any matter as to which the holders of Series T are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

(l) "Voting Preferred Stock" means, with regard to any matter as to which the holders of Series T are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series T) that rank equally with Series T either as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation and upon which like voting rights have been conferred and are exercisable with respect to such matter.

#### Section 4. Dividends.

(a) Rate. Holders of Series T shall be entitled to receive, on each share of Series T, out of funds legally available for the payment of dividends under Delaware law, non-cumulative cash dividends with respect to each Dividend Period (as defined below) at a per annum rate of 6% (the "Dividend Rate") on the amount of \$100,000 per share of Series T. Following the Amendment Effective Date, dividends shall be payable in arrears (as provided below in this Section 4(a)), but only when, as and if declared by the Board of Directors (or a duly authorized committee of the Board of Directors), on each October 10, January 10, April 10 and July 10 (each, a "Dividend Payment Date"), commencing on October 10, 2011; *provided* that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series T on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day. Dividends payable on the Series T in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on the Series T on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Series T on any Dividend Payment Date will be payable to holders of record of Series T as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day before such Dividend Payment Date (as originally scheduled) or such other record date fixed by the Board of Directors (or a duly

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authorized committee of the Board of Directors) that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Each dividend period (a “Dividend Period”) shall commence on and include a Dividend Payment Date (other than the initial Dividend Period, which commenced on and included the Original Issue Date of the Series T) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable in respect of a Dividend Period shall be payable in arrears on the first Dividend Payment Date after such Dividend Period.

Holders of Series T shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on the Series T as specified in this Section 4 (subject to the other provisions of this Certificate of Designations).

(b) Non-Cumulative Dividends. Dividends on shares of Series T shall be non-cumulative. To the extent that any dividends on the shares of Series T with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series T shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to the Series T, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

(c) Priority of Dividends. So long as any share of Series T remains outstanding, no dividend shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than a dividend payable solely in Junior Stock), and no Common Stock, Junior Stock or Parity Stock shall be purchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock or of one share of Parity Stock for or into another share of Parity Stock (with the same or lesser per share liquidation amount) or Junior Stock) in respect of or during a particular Dividend Period as the case may be, unless dividends for such Dividend Period on all outstanding shares of Series T have been or are contemporaneously declared and paid in full (or declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Series T on the applicable record date). The foregoing provision shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the cashless exercises and similar actions under any employee benefit plan in the ordinary course of business and consistent with past practice prior to the Original Issue Date; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business; (iii) in connection with the issuance of Junior Stock or Parity Stock, ordinary sale and repurchase transactions to facilitate the distribution of such Junior Stock or Parity Stock; and (iv) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of, and at the ultimate cost of, any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment

dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon the Series T and any shares of Parity Stock, all dividends declared on the Series T and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends declared shall bear the same ratio to each other as all declared and unpaid dividends per share on the Series T and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) bear to each other.

Subject to the foregoing, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors (or a duly authorized committee of the Board of Directors) may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and the Series T shall not be entitled to participate in any such dividends.

#### Section 5. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Series T shall be entitled to receive for each share of Series T, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, and after satisfaction of all liabilities and obligations to creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to the Series T as to such distribution, payment in full in an amount equal to the sum of (i) \$100,000 per share and (ii) any declared and unpaid dividends thereon, without cumulation of any undeclared dividends, to but excluding the date of liquidation, dissolution or winding up. The Series T may be fully subordinated to interests held by the U.S. government in the event that the Corporation enters into a receivership, insolvency, liquidation or similar proceeding.

(b) Partial Payment. If in any distribution described in Section 5(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay the Liquidation Preferences (as defined below) in full to all holders of Series T and all holders of any stock of the Corporation ranking equally with the Series T as to such distribution, the amounts paid to the holders of Series T and to the holders of all such other stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series T and the holders of all such other stock. In any such distribution, the "Liquidation Preference" of any holder of stock of the Corporation shall mean the amount otherwise payable to such holder in such distribution (assuming no limitation on the assets of the Corporation available for such distribution), including an amount equal to any declared but unpaid dividends, *provided* that the Liquidation Preference for any share of Series T shall be determined in accordance with Section 5(a) above.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Series T, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation For purposes of this Section 5, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series

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T receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

Section 6. Redemption.

(a) Optional Redemption. The Corporation, at its option, subject to any required prior approval of the Board of Governors of the Federal Reserve System and to the satisfaction of any conditions set forth in the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System applicable to redemption of the shares of Series T, may redeem, in whole at any time or in part from time to time, but in any case no earlier than May 7, 2019 the shares of Series T at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to the sum of (i) \$105,000 per share and (ii) any declared and unpaid dividends thereon, without cumulation for any undeclared dividends, to but excluding the redemption date. The minimum number of shares of Series T redeemable at any time is the lesser of (x) 10,000 shares of Series T and (y) the number of shares of Series T outstanding. The redemption price for any shares of Series T shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 4 above.

(b) No Sinking Fund. The Series T will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series T will have no right to require redemption of any shares of Series T.

(c) Notice of Redemption. Notice of every redemption of shares of Series T shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series T designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series T. Notwithstanding the foregoing, if the Series T are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series T at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Series T to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price. Notwithstanding anything to the contrary herein, upon receipt of any notice of redemption hereunder, the holder of any share of Series T outstanding at such time shall have five (5) Business Days to deliver to the Corporation written notice of its election to pay some or all of the applicable exercise price with respect to an exercise, in whole or in part, of such holder's rights under any warrant to purchase Common Stock of the Corporation originally issued by the Corporation in connection with the issuance of the Series T by means of a surrender to the Corporation of shares of the Series T in accordance with the terms and conditions hereof and of any such warrant, and the Corporation's right to redeem the shares of Series T specified in such notice of redemption shall be (x) tolled during such five (5) Business Day period and (y) if the holder so elects to exercise such warrant and surrender such

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shares of Series T, in whole or in part, automatically terminated only with respect to such shares of Series T to be so surrendered.

(d) Partial Redemption. In case of any redemption of part of the shares of Series T at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Corporation may determine to be fair and equitable. Subject to the provisions hereof, the Corporation shall have full power and authority to prescribe the terms and conditions upon which shares of Series T shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$50 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

Section 7. Conversion. Holders of Series T shares shall have no right to exchange or convert such shares into any other securities, except in connection with the surrender to the Corporation of shares of the Series T to satisfy any portion of the applicable exercise price with respect to an exercise, in whole or in part, of any warrant to purchase Common Stock of the Corporation issued in connection with the original issuance of the Series T by the Corporation.

#### Section 8. Voting Rights.

(a) General. The holders of Series T shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Class Voting Rights as to Particular Matters. So long as any shares of Series T are outstanding, in addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, the vote or consent of the holders of at least 66 2/3% of the shares of Series T and any Voting Preferred Stock at the time outstanding and entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation ranking senior to the Series T with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

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(ii) Amendment of Series T. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to materially and adversely affect the special rights, preferences, privileges or voting powers of the Series T, taken as a whole; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Series T, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series T remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series T immediately prior to such consummation, taken as a whole; *provided, however*, that for all purposes of this Section 8(b), any increase in the amount of the authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series T with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series T.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8 (b) would adversely affect the Series T and one or more but not all other series of Preferred Stock, then only the Series T and such series of Preferred Stock as are adversely affected by and entitled to vote on the matter shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8 (b) would adversely affect the Series T but would not similarly adversely affect all other series of Voting Parity Stock, then only the Series T and each other series of Voting Parity Stock as is similarly adversely affected by and entitled to vote on the matter, if any, shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

(c) Series T Voting Rights as to Particular Matters. In addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, so long as at least 10,000 shares of Series T are outstanding, the vote or consent of the holders of at least 50.1% of the shares of Series T at the time outstanding, voting in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization or Issuance of Senior Stock. Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation, or the issuance of any shares of any class or series of capital stock of the Corporation, in each case, ranking senior to the Series T with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Series T. Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to affect or change the rights, preferences, privileges or voting powers of the Series T so as not to be substantially similar to those in effect immediately prior to such amendment, alteration or repeal; or



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(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Series T, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series T remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof as are substantially similar to the rights, preferences, privileges and voting powers, and limitations and restrictions of the Series T immediately prior to such consummation; *provided, however*, that for all purposes of this Section 8(c), the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series T with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series T.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Series T shall be required pursuant to Section 8(b) or (c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series T (or, in the case of Section 8(c), more than 40,000 shares of Series T) shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 6 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Series T (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors (or a duly authorized committee of the Board of Directors), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which the Series T is listed or traded at the time. Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Series T and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series T are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amount of the shares voted or covered by the consent (*provided* that the specified liquidation amount for any share of Series T shall be the Liquidation Preference for such share) as if the Corporation were liquidated on the record date for such vote or consent, if any, or, in the absence of a record date, on the date for such vote or consent.

Section 9. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series T may deem and treat the record holder of any share of Series T as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 10. Notices. All notices or communications in respect of Series T shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law. Notwithstanding the foregoing,

if the Series T are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Series T in any manner permitted by such facility.

Section 11. No Preemptive Rights. No share of Series T shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 12. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

Section 13. Surrender Rights. In connection with the exercise of any rights under any warrant to purchase Common Stock of the Corporation issued in connection with the original issuance of the Series T, a holder of shares of Series T shall have the right to pay some or all of the applicable exercise price with respect to an exercise, in whole or in part, of such holder's rights under any such warrant by means of a surrender to the Corporation of the applicable amount shares of the Series T.

Section 14. Other Rights. The shares of Series T shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

2. The foregoing amendment was duly adopted in accordance with the provision of Section 242 of the General Corporation

Law of the State of Delaware.

IN WITNESS WHEREOF, BANK OF AMERICA CORPORATION has caused this Certificate of Amendment to be signed by its duly authorized officer this 7<sup>th</sup> day of May, 2014.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES JR.

Name: Ross E. Jeffries, Jr.

Title: Deputy General Counsel, and Corporate Secretary

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**CERTIFICATE OF DESIGNATIONS**

**OF**

**FIXED-TO-FLOATING RATE**

**NON-CUMULATIVE PREFERRED STOCK, SERIES V**

**OF**

**BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the "*Board of Directors*") by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the Series V Final Terms Committee of the Board of Directors (the "*Committee*") in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on June 12, 2014, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 7, 2014, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V" (the "*Series V Preferred Stock*"). Each share of Series V Preferred Stock shall be identical in all respects to every other share of Series V Preferred Stock. Series V 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.

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## Section 2. Number of Shares.

The number of authorized shares of Series V Preferred Stock shall be 60,000. 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 V Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series V Preferred Stock.

## Section 3. Definitions.

As used herein with respect to Series V Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series V Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series V Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series V Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series V Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series V Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series V Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

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“*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 V Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Floating Rate Non-Cumulative Preferred Stock, Series 1, (m) Floating Rate Non-Cumulative Preferred Stock, Series 2, (n) 6.375% Non-Cumulative Preferred Stock, Series 3, (o) Floating Rate Non-Cumulative Preferred Stock, Series 4, (p) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (q) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series V Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series V 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.

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“Series V Preferred Stock” shall have the meaning set forth in Section 1 hereof.

“Three-Month LIBOR” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series V Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series V Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series V Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on June 17 and December 17 of each year, beginning on December 17, 2014, and (y) for

the Floating Rate Period, quarterly in arrears on each March 17, June 17, September 17 and December 17, beginning on September 17, 2019; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to June 17, 2019, without any interest or other payment in respect of such delay, and (ii) after June 17, 2019, with dividends accruing to the actual payment date (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series V 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 V Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 5.125%, for each Dividend Period from the issue date to, but excluding, June 17, 2019 (the “*Fixed Rate Period*”), and (2) thereafter, Three-Month LIBOR plus a spread of 3.387%, for each Dividend Period from, and including, June 17, 2019 (the “*Floating Rate Period*”). The record date for payment of dividends on the Series V Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series V Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series V Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series V Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series V 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 V 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

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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 V 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 V Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series V 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 V Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series V 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 V 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 V 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 V Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series V 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 V Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series V 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 V Preferred Stock shall not be entitled to any further payments in the event of any such voluntary



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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 V Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series V 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 V 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 V Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series V Preferred Stock at the time outstanding, at any time on or after June 17, 2019, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series V Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the

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holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series V 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 V Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series V Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series V 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 V 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 V Preferred Stock at the time outstanding, the shares of Series V Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series V Preferred Stock in proportion to the number of Series V Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors or any duly authorized committee of the Board of Directors may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series V Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount

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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 V Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

**(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series V Preferred Stock or any other class or series of preferred stock that ranks on parity with Series V Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series V Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series V Preferred Stock and any other class or series of preferred stock that ranks on parity with Series V Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

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**(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 V Preferred Stock and any other

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class or series of the Corporation's stock that ranks on parity with Series V 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 V 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 V Preferred Stock and any other class or series of preferred stock that ranks on parity with Series V Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series V Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series V 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 V Preferred Stock and any other class or series of preferred stock that ranks on parity with Series V 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 V 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 V

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Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series V Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least of the voting power of the Series V Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series V Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series V Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least of the shares of the Series V Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series V Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series V Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series V Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series V Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series V Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series V Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series V Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

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**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series V Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series V Preferred Stock shall not have any rights of preemption or rights to convert such Series V Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series V Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series V Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series V 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 V Preferred Stock are not subject to the operation of a sinking fund.

**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 1<sup>th</sup> day of June, 2014.

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**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.

Name: Ross E. Jeffries, Jr.

Title: Corporate Secretary and Deputy General Counsel



**CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES X  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the "*Board of Directors*") by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the "*Committee*") in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on September 2, 2014, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 7, 2014 and July 24, 2014, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X" (the "*Series X Preferred Stock*"). Each share of Series X Preferred Stock shall be identical in all respects to every other share of Series X Preferred Stock. Series X Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series X Preferred Stock shall be 80,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series X Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series X Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series X Preferred Stock:

“*Business Day*” means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series X Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series X Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series X Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series X Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series X Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series X Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series X Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred

Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) Floating Rate Non-Cumulative Preferred Stock, Series 1, (n) Floating Rate Non-Cumulative Preferred Stock, Series 2, (o) 6.375% Non-Cumulative Preferred Stock, Series 3, (p) Floating Rate Non-Cumulative Preferred Stock, Series 4, (q) Floating Rate Non-Cumulative Preferred Stock, Series 5, (r) if issued, 6.625% Non-Cumulative Preferred Stock, Series W, and (s) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series X Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series X Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series X Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the

first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series X Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series X Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series X Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on March 5 and September 5 of each year, beginning on March 5, 2015, and (y) for the Floating Rate Period, quarterly in arrears on each March 5, June 5, September 5 and December 5, beginning on December 5, 2024; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to September 5, 2024, without any interest or other payment in respect of such delay, and (ii) after September 5, 2024, with dividends accruing to the actual payment date (each such day on which dividends are payable a "Dividend Payment Date"). The period from, and including, the date of issuance of the Series X Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period." Dividends on each share of Series X Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a *rate per annum* equal to (1) 6.250%, for each Dividend Period from the issue date to, but excluding, September 5, 2024 (the "Fixed Rate Period"), and (2) thereafter, Three-Month LIBOR plus a spread of 3.705%, for each Dividend Period from, and including, September 5, 2024 (the "Floating Rate Period"). The record date for payment of dividends on the Series X Preferred Stock shall be the fifteenth day of the calendar month preceding the month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series X Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series X Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series X Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series X Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series X Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be

declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *pro rata* portion, of the Series X Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series X Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series X Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series X Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series X Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series X Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series X Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series X Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series X Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series X Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series X Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series X Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series X Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series X Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series X Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series X Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series X Preferred Stock at the time outstanding, at any time on or after September 5, 2024, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series X Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series X Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series X Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series X Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series X Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of

the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series X Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series X Preferred Stock at the time outstanding, the shares of Series X Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series X Preferred Stock in proportion to the number of Series X Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors or any duly authorized committee of the Board of Directors may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series X Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series X Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

#### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series X Preferred Stock or any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series X Preferred Stock (together with holders of any class of the Corporation’s authorized

preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series X Preferred Stock and any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series X Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series X Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series X Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series X Preferred Stock and any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series X Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series X Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series X Preferred Stock and any other class or series of preferred stock that ranks on parity with Series X Preferred Stock as to payment of dividends, if any, for the



equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series X Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series X Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series X Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least of the voting power of the Series X Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series X Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series X Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least of the shares of the Series X Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series X Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series X Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series X Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series X Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series X Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series X Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series X Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series X Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation

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and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series X Preferred Stock shall not have any rights of preemption or rights to convert such Series X Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series X Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series X Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series X Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series X Preferred Stock are not subject to the operation of a sinking fund.

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**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 5<sup>th</sup> day of September, 2014.

**BANK OF AMERICA CORPORATION**

By: /s/ Ross E. Jeffries, Jr.  
Name: Ross E. Jeffries, Jr.  
Title: Corporate Secretary and Deputy General Counsel

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**CERTIFICATE OF DESIGNATIONS  
OF  
6.625% NON-CUMULATIVE PREFERRED STOCK, SERIES W  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on September 2, 2014, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 7, 2014 and July 24, 2014, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “6.625% Non-Cumulative Preferred Stock, Series W” (the “*Series W Preferred Stock*”). Each share of Series W Preferred Stock shall be identical in all respects to every other share of Series W Preferred Stock. Series W 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 W Preferred Stock shall be 46,000. 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 W Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series W Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series W Preferred Stock:

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“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series W Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series W Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series W Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series W Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series W Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series W Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) Floating Rate Non-Cumulative Preferred Stock, Series 1, (n) Floating Rate Non-Cumulative Preferred Stock, Series 2, (o) 6.375% Non-Cumulative Preferred Stock, Series 3, (p) Floating Rate Non-Cumulative Preferred Stock, Series 4, (q) Floating Rate Non-Cumulative Preferred Stock, Series 5, (r) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X and (s) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series W 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 W Preferred Stock as to the payment of

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dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series W Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series W Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series W Preferred Stock, and no more, payable quarterly in arrears on March 9, June 9, September 9 and December 9 of each year, beginning on December 9, 2014; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series W 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 W 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 W Preferred Stock shall be the fifteenth day of the calendar month preceding the month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series W Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series W Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series W Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series W 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 W 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 W 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 W Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series W 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 W Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series W 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 W 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 W 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 W Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series W 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 W Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series W 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 W 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 W Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series W 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 W 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 W Preferred Stock and all holders of any Parity Stock, the

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holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series W Preferred Stock at the time outstanding, at any time on or after September 9, 2019 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series W Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series W 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 W Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series W Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series W 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 W 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 W Preferred Stock at the time outstanding, the shares of Series W Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series W Preferred Stock in proportion to the number of Series W Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have



full power and authority to prescribe the terms and conditions upon which shares of Series W Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depositary Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series W Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

#### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series W Preferred Stock or any other class or series of preferred stock that ranks on parity with Series W Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series W Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation’s securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series W Preferred Stock and any other class or series of preferred stock that ranks on

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parity with Series W Preferred Stock as to payment of dividends having equivalent voting rights is a “*Preferred Director*.”

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series W Preferred Stock and any other class or series of the Corporation’s stock that ranks on parity with Series W 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 W 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 W Preferred Stock and any other class or series of preferred stock that ranks on parity with Series W Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation’s By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series W Preferred Stock may (at the Corporation’s expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation’s stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series W 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 W Preferred Stock and any other class or series of preferred stock that ranks on parity with Series W Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series W 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 W 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

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vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series W Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least of the voting power of the Series W Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series W Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series W Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least of the shares of the Series W Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series W Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series W Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series W Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series W Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series W Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series W Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series W Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series W Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series W Preferred Stock shall not have any rights of preemption or rights to convert such Series W 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 or any authorized committee of the Board of Directors, without the vote of the holders of the Series W Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series W Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series W 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 W Preferred Stock are not subject to the operation of a sinking fund.

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**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 9<sup>th</sup> day of September, 2014.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.  
Name: Ross E. Jeffries, Jr.  
Title: Deputy General Counsel and Corporate Secretary

**CERTIFICATE OF DESIGNATIONS  
OF  
FIXED-TO-FLOATING RATE  
NON-CUMULATIVE PREFERRED STOCK, SERIES Z  
OF  
BANK OF AMERICA CORPORATION**

Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the "*Board of Directors*") by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the "*Committee*") in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on October 20, 2014, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated May 7, 2014 and July 24, 2014, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z" (the "*Series Z Preferred Stock*"). Each share of Series Z Preferred Stock shall be identical in all respects to every other share of Series Z Preferred Stock. Series Z Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series Z Preferred Stock shall be 56,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series Z Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series Z Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series Z Preferred Stock:

"*Business Day*" means, for the Fixed Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive

order to close in New York, New York or in Charlotte, North Carolina; and, for the Floating Rate Period, each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina and is a London Banking Day.

“*Calculation Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., or such other bank or entity as may be appointed by the Corporation to act as calculation agent for the Series Z Preferred Stock during the Floating Rate Period (as defined below).

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series Z Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Z Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Z Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series Z Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series Z Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Determination Date*” shall have the meaning set forth below in the definition of “Three-Month LIBOR.”

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Fixed Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Floating Rate Period*” shall have the meaning set forth in Section 4(a) hereof.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series Z Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*London Banking Day*” means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual

Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) Floating Rate Non-Cumulative Preferred Stock, Series 1, (p) Floating Rate Non-Cumulative Preferred Stock, Series 2, (q) 6.375% Non-Cumulative Preferred Stock, Series 3, (r) Floating Rate Non-Cumulative Preferred Stock, Series 4, (s) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (t) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series Z Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Reuters Screen Page “LIBOR01”*” means the display page so designated on Reuters (or any other page as may replace that page on that service, or any other service as may be nominated as the information vendor, for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series Z Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series Z Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01,” Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major banks in New York City selected by the Calculation Agent (in consultation with the Corporation), at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Calculation Agent (in consultation with the Corporation) to provide quotations are quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent’s establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal



offices of the Corporation, will be made available to any holder of Series Z Preferred Stock upon request and will be final and binding in the absence of manifest error.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series Z Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series Z Preferred Stock, and no more, payable (x) for the Fixed Rate Period, semi-annually in arrears on April 23 and October 23 of each year, beginning on April 23, 2015, and (y) for the Floating Rate Period, quarterly in arrears on each January 23, April 23, July 23 and October 23, beginning on January 23, 2025; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless, for the Fixed Rate Period, that day falls in the next calendar year or, for the Floating Rate Period, that day falls in the next calendar month, then in each such case payment of such dividend will occur on the immediately preceding Business Day) (i) on or prior to October 23, 2024, without any interest or other payment in respect of such delay, and (ii) after October 23, 2024, with dividends accruing to the actual payment date (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series Z Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series Z Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to (1) 6.500%, for each Dividend Period from the issue date to, but excluding, October 23, 2024 (the “*Fixed Rate Period*”), and (2) thereafter, Three-Month LIBOR plus a spread of 4.174%, for each Dividend Period from, and including, October 23, 2024 (the “*Floating Rate Period*”). The record date for payment of dividends on the Series Z Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series Z Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series Z Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series Z Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series Z Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series Z Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or

made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *pro rata* portion, of the Series Z Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series Z Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation's Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series Z Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series Z Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series Z Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series Z Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series Z Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series Z Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series Z Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series Z Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series Z Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series Z Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series Z Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series Z Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series Z Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all

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holders of Series Z Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

#### **Section 6. Redemption.**

**(a) Optional Redemption.** The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series Z Preferred Stock at the time outstanding, at any time on or after October 23, 2024, or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series Z Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series Z Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series Z Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series Z Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series Z Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series Z Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series Z Preferred Stock at the time outstanding, the shares of Series Z Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series Z Preferred Stock in proportion to the number of Series Z Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series Z Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

#### **Section 7. Voting Rights.**

**(a) General.** The holders of Series Z Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

#### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series Z Preferred Stock or any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least three or more semi-annual or six or more quarterly Dividend Periods (whether consecutive or not), as applicable, the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series Z Preferred Stock (together with holders of any class of the Corporation’s authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation’s securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series Z Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends having equivalent voting rights is a “*Preferred Director*.”

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series Z Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series Z Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series Z Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series Z Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series Z Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series Z Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series Z Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Z Preferred Stock as to payment of dividends, if any, for the equivalent of at least two semi-annual or four quarterly Dividend Periods, as applicable, then the right of the holders of Series Z Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series Z Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series Z Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series Z Preferred Stock and the holders of any other Parity Stock

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entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series Z Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series Z Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 2/3% of the shares of the Series Z Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series Z Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series Z Preferred Stock as to dividends and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series Z Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series Z Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series Z Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series Z Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series Z Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series Z Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series Z Preferred Stock shall not have any rights of preemption or rights to convert such Series Z Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series Z Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

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**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series Z Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series Z Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series Z Preferred Stock are not subject to the operation of a sinking fund.

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**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 23rd day of October, 2014.

**BANK OF AMERICA CORPORATION**

By: /s/ Ross E. Jeffries, Jr.  
Name: Ross E. Jeffries, Jr.  
Title: Corporate Secretary and Deputy General Counsel



**CERTIFICATE OF DESIGNATIONS  
OF  
6.500% NON-CUMULATIVE PREFERRED STOCK, SERIES Y  
OF  
BANK OF AMERICA CORPORATION**

First: Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), hereby certifies that, pursuant to authority conferred upon the Board of Directors of the Corporation (the “*Board of Directors*”) by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, which authorize the issuance of not more than 100,000,000 shares of preferred stock, par value \$0.01 per share, and pursuant to authority conferred upon the New Preferred Stock Committee of the Board of Directors (the “*Committee*”) in accordance with Section 141(c) of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”), the following resolutions were duly adopted by the Committee pursuant to the written consent of the Committee duly adopted on January 20, 2015, in accordance with Section 141(f) of the General Corporation Law:

**RESOLVED**, that, pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated January 12, 2015, the provisions of the Amended and Restated Certificate of Incorporation, the By-laws of the Corporation, and applicable law, a series of Preferred Stock, par value \$0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.**

The designation of the series of preferred stock shall be “6.500% Non-Cumulative Preferred Stock, Series Y” (the “*Series Y Preferred Stock*”). Each share of Series Y Preferred Stock shall be identical in all respects to every other share of Series Y Preferred Stock. Series Y Preferred Stock will rank equally with Parity Stock, if any, will rank senior to Junior Stock and will rank junior to Senior Stock, if any, with respect to the payment of dividends and the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

**Section 2. Number of Shares.**

The number of authorized shares of Series Y Preferred Stock shall be 44,000. That number from time to time may be increased (but not in excess of the total number of authorized shares of preferred stock) or decreased (but not below the number of shares of Series Y Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors or any duly authorized committee of the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law stating that such increase or decrease, as the case may be, has been so authorized. The Corporation shall have the authority to issue fractional shares of Series Y Preferred Stock.

**Section 3. Definitions.**

As used herein with respect to Series Y Preferred Stock:

“*Business Day*” means each Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions are not authorized or obligated by law, regulation or executive order to close in New York, New York or in Charlotte, North Carolina.

“*Capital Treatment Event*” means the good faith determination by the Corporation that, as a result of any: (i) amendment to, clarification of, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of any shares of the Series Y Preferred Stock; (ii) proposed change in those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Y Preferred Stock; or (iii) official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced or becomes effective after the initial issuance of any shares of the Series Y Preferred Stock, there is more than an insubstantial risk that the Corporation shall not be entitled to treat an amount equal to the full liquidation preference of all shares of the Series Y Preferred Stock then outstanding as “additional Tier 1 capital” (or its equivalent) for purposes of the capital adequacy guidelines or regulations of the Board of Governors of the Federal Reserve System or other appropriate federal banking agency, as then in effect and applicable, for as long as any share of the Series Y Preferred Stock is outstanding.

“*Depository Company*” shall have the meaning set forth in Section 6(d) hereof.

“*Dividend Payment Date*” shall have the meaning set forth in Section 4(a) hereof.

“*Dividend Period*” shall have the meaning set forth in Section 4(a) hereof.

“*DTC*” means The Depository Trust Company, together with its successors and assigns.

“*Junior Stock*” means the Corporation’s common stock and any other class or series of stock of the Corporation now existing or hereafter authorized over which Series Y Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Parity Stock*” means the Corporation’s (a) 7% Cumulative Redeemable Preferred Stock, Series B, (b) 6.204% Non-Cumulative Preferred Stock, Series D, (c) Floating Rate Non-Cumulative Preferred Stock, Series E, (d) Floating Rate Non-Cumulative Preferred Stock, Series F, (e) Adjustable Rate Non-Cumulative Preferred Stock, Series G, (f) 6.625% Non-Cumulative Preferred Stock, Series I, (g) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, (h) 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L, (i) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series M, (j) 6% Non-Cumulative Perpetual Preferred Stock, Series T, (k) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series U, (l) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series V, (m) 6.625% Non-Cumulative Preferred Stock, Series W, (n) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series X, (o) Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series Z, (p) Floating Rate Non-Cumulative Preferred Stock, Series 1, (q) Floating Rate Non-Cumulative Preferred Stock, Series 2, (r) 6.375% Non-Cumulative Preferred Stock, Series 3, (s) Floating Rate Non-Cumulative Preferred Stock, Series 4, (t) Floating Rate Non-Cumulative Preferred Stock, Series 5, and (u) any other class or series of stock of the Corporation hereafter authorized that ranks on a par with the Series Y Preferred Stock in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

“*Senior Stock*” means any class or series of stock of the Corporation now existing or hereafter authorized which has preference or priority over the Series Y Preferred Stock as to the payment of dividends or in the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

“*Series Y Preferred Stock*” shall have the meaning set forth in Section 1 hereof.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series Y Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of funds legally available for the payment of dividends, non-cumulative cash dividends based on the liquidation preference of \$25,000 per share of Series Y Preferred Stock, and no more, payable quarterly in arrears on January 27, April 27, July 27 and October 27 of each year, beginning on April 27, 2015; provided, however, if any such day is not a Business Day, then payment of any dividend otherwise payable on that date will be made on the next succeeding day that is a Business Day (unless that day falls in the next calendar year, in which case payment of such dividend will occur on the immediately preceding Business Day), without any interest or other payment in respect of such delay (each such day on which dividends are payable a “*Dividend Payment Date*”). The period from, and including, the date of issuance of the Series Y Preferred Stock or any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “*Dividend Period*.” Dividends on each share of Series Y Preferred Stock will accrue on the liquidation preference of \$25,000 per share at a rate *per annum* equal to 6.500%. The record date for payment of dividends on the Series Y Preferred Stock shall be the first day of the calendar month in which the Dividend Payment Date falls or such other record date fixed by the Board of Directors or a duly authorized committee of the Board of Directors that is not more than 60 days nor less than 10 days prior to such Dividend Payment Date. The amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

**(b) Non-Cumulative Dividends.** Dividends on shares of Series Y Preferred Stock shall be non-cumulative. To the extent that any dividends on the shares of Series Y Preferred Stock with respect to any Dividend Period are not declared and paid, in full or otherwise, on the Dividend Payment Date for such Dividend Period, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series Y Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period on or after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series Y Preferred Stock, Parity Stock, Junior Stock or any other class or series of authorized preferred stock of the Corporation.

**(c) Priority of Dividends.** So long as any share of Series Y Preferred Stock remains outstanding, (i) no dividend shall be declared or paid or set aside for payment and no distribution shall be declared or made or set aside for payment on any Junior Stock, other than a dividend payable solely in shares of Junior Stock, (ii) no shares of Junior Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, and other than through the use of the proceeds of a substantially contemporaneous sale of other shares of Junior Stock), nor shall any monies be paid to or made available for a sinking fund for the redemption of any such Junior Stock by the Corporation and (iii) no shares of Parity Stock shall be repurchased, redeemed or otherwise acquired for consideration by the Corporation otherwise than pursuant to *pro rata* offers to purchase all, or *apro rata* portion, of the Series Y Preferred Stock and such Parity Stock except by conversion into or exchange for Junior Stock, in each case, unless full dividends on all outstanding shares of Series Y Preferred Stock for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. The foregoing limitations do not apply to purchases or acquisitions of the Corporation’s Junior Stock pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted. Subject to the succeeding sentence, for so long as any shares of Series Y Preferred Stock remain outstanding, no dividends shall be declared or paid or set aside for payment on any Parity Stock for any period unless full dividends on all outstanding shares of Series Y Preferred Stock

for the immediately preceding Dividend Period have been paid in full or declared and a sum sufficient for the payment thereof set aside. To the extent the Corporation declares dividends on the Series Y Preferred Stock and on any Parity Stock but cannot make full payment of such declared dividends, the Corporation will allocate the dividend payments on a *pro rata* basis among the holders of the shares of Series Y Preferred Stock and the holders of any Parity Stock then outstanding. For purposes of calculating the *pro rata* allocation of partial dividend payments, the Corporation will allocate dividend payments based on the ratio between the then-current dividend payments due on the shares of Series Y Preferred Stock and the aggregate of the current and accrued dividends due on the outstanding Parity Stock. No interest will be payable in respect of any dividend payment on shares of Series Y Preferred Stock that may be in arrears. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any Junior Stock from time to time out of any funds legally available therefor, and the shares of Series Y Preferred Stock shall not be entitled to participate in any such dividend.

#### **Section 5. Liquidation Rights.**

**(a) Liquidation.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Series Y Preferred Stock shall be entitled, out of assets legally available for distribution to stockholders of the Corporation, before any distribution or payment out of the assets of the Corporation may be made to or set aside for the holders of any Junior Stock and subject to the rights of the holders of any class or series of securities ranking senior to or on parity with Series Y Preferred Stock upon liquidation and the rights of the Corporation's depositors and other creditors, to receive in full a liquidating distribution in the amount of the liquidation preference of \$25,000 per share, plus any dividends which have been declared but not yet paid, without accumulation of any undeclared dividends, to the date of liquidation. The holders of Series Y Preferred Stock shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation other than what is expressly provided for in this Section 5.

**(b) Partial Payment.** If the assets of the Corporation are not sufficient to pay in full the liquidation preference plus any dividends which have been declared but not yet paid to all holders of Series Y Preferred Stock and all holders of any Parity Stock, the amounts paid to the holders of Series Y Preferred Stock and to the holders of all Parity Stock shall be *pro rata* in accordance with the respective aggregate liquidation preferences, plus any dividends which have been declared but not yet paid, of Series Y Preferred Stock and all such Parity Stock.

**(c) Residual Distributions.** If the liquidation preference plus any dividends which have been declared but not yet paid has been paid in full to all holders of Series Y Preferred Stock and all holders of any Parity Stock, the holders of Junior Stock shall be entitled to receive all remaining assets of the Corporation according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation shall not be deemed a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, nor shall the merger, consolidation or any other business combination transaction of the Corporation into or with any other corporation or person or the merger, consolidation or any other business combination transaction of any other corporation or person into or with the Corporation be deemed to be a voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation.

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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, may redeem out of funds legally available therefor, (i) in whole or in part, the shares of Series Y Preferred Stock at the time outstanding, at any time on or after January 27, 2020 or (ii) in whole but not in part, at any time within 90 days after a Capital Treatment Event, in each case upon notice given as provided in Section 6(b) below. The redemption price for shares of Series Y Preferred Stock redeemed pursuant to (i) or (ii) of the preceding sentence shall be \$25,000 per share plus (except as otherwise provided below) dividends that have accrued but have not been paid for the then-current Dividend Period to but excluding the redemption date, without accumulation of any undeclared dividends. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the record date for a dividend period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such record date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) Notice of Redemption.** Notice of every redemption of shares of Series Y Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series Y Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series Y Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series Y Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series Y Preferred Stock is held in book-entry form through DTC, the Corporation may give such notice in any manner permitted by DTC.

**(c) Partial Redemption.** In case of any redemption of only part of the shares of Series Y Preferred Stock at the time outstanding, the shares of Series Y Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series Y Preferred Stock in proportion to the number of Series Y Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the Board of Directors or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series Y Preferred Stock shall be redeemed from time to time.

**(d) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors or any duly authorized committee of the Board of Directors (the "*Depository Company*") in trust for the *pro rata* benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so

deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the 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 Y Preferred Stock shall not be entitled to vote on any matter except as set forth in paragraphs 7(b) and 7(c) below or as required by law.

#### **(b) Special Voting Right.**

**(i) Voting Right.** If and whenever dividends on the Series Y Preferred Stock or any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends, and upon which voting rights equivalent to those granted by this Section 7(b)(i) have been conferred and are exercisable, have not been paid in an aggregate amount equal to, as to any class or series, the equivalent of at least six or more quarterly Dividend Periods (whether consecutive or not), the number of directors constituting the Board of Directors shall be increased by two, and the holders of the Series Y Preferred Stock (together with holders of any class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist), shall have the right, voting separately as a single class without regard to series, to the exclusion of the holders of common stock, to elect two directors of the Corporation to fill such newly created directorships (and to fill any vacancies in the terms of such directorships), provided that the election of such directors must not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or other exchange on which the Corporation's securities may be listed) that listed companies must have a majority of independent directors and further provided that the Board of Directors shall at no time include more than two such directors. Each such director elected by the holders of shares of Series Y Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends having equivalent voting rights is a "*Preferred Director*."

**(ii) Election.** The election of the Preferred Directors will take place at any annual meeting of stockholders or any special meeting of the holders of Series Y Preferred Stock and any other class or series of the Corporation's stock that ranks on parity with Series Y Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid, called as provided herein. At any time after the special voting power has vested pursuant to Section 7(b)(i) above, the secretary of the Corporation may, and upon the written request of any holder of Series Y Preferred Stock (addressed to the secretary at the Corporation's principal office) must (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders), call a special meeting of the holders of Series Y Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends and having equivalent voting rights and for which dividends have not been paid for the election of the two directors to be elected by them as provided in Section 7(b)(iii) below. The Preferred Directors shall each be entitled to one vote per director on any matter.

**(iii) Notice of Special Meeting.** Notice for a special meeting to elect the Preferred Directors will be given in a similar manner to that provided in the Corporation's By-laws for a special meeting of the stockholders. If the secretary of the Corporation does not call a special meeting within 20 days after receipt of any such request, then any holder of Series Y Preferred Stock may (at the Corporation's expense) call such meeting, upon notice as provided in this Section 7(b)(iii), and for that purpose will have access to the stock register of the Corporation. The Preferred Directors elected at any such special meeting will hold office until the next annual meeting of the Corporation's stockholders unless they have been previously terminated or removed pursuant to Section 7(b)(iv). In case any vacancy in the office of a Preferred Director occurs (other than prior to the initial election of the Preferred Directors), the vacancy may be filled by the written consent of the Preferred Director remaining in office, or if none remains in office, by the vote of the holders of the Series Y Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) to serve until the next annual meeting of the stockholders.

**(iv) Termination; Removal.** Whenever full dividends have been paid regularly on the Series Y Preferred Stock and any other class or series of preferred stock that ranks on parity with Series Y Preferred Stock as to payment of dividends, if any, for the equivalent of at least four quarterly Dividend Periods, then the right of the holders of Series Y Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of the special voting rights in the case of any similar non-payment of dividends in respect of future Dividend Periods). The terms of office of the Preferred Directors will immediately terminate, and the number of directors constituting the Board of Directors will be reduced accordingly. Any Preferred Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series Y Preferred Stock (together with holders of any other class of the Corporation's authorized preferred stock having equivalent voting rights, whether or not the holders of such preferred stock would be entitled to vote for the election of directors if such default in dividends did not exist) when they have the voting rights described in this Section 7(b).

**(c) Other Voting Rights.** So long as any shares of the Series Y Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66 2/3% of the voting power of the Series Y Preferred Stock and the holders of any other Parity Stock entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or at any meeting called for the purpose, authorize, create or issue any capital stock ranking senior to the Series Y Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up, or reclassify any authorized capital stock into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock. Further, so long as any shares of the Series Y Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 2/3% of the shares of the Series Y Preferred Stock, amend, alter or repeal any provision of this Certificate of Designations or the Certificate of Incorporation of the Corporation, including by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of the Series Y Preferred Stock.

Notwithstanding the foregoing, (i) any increase in the amount of authorized common stock or authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock, or the authorization, creation and issuance of other classes or series of capital stock, in each case ranking on a parity with or junior to the shares of the Series Y Preferred Stock as to dividends

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and distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights and (ii) a merger or consolidation of the Corporation with or into another entity in which the shares of the Series Y Preferred Stock (A) remain outstanding or (B) are converted into or exchanged for preference securities of the surviving entity or any entity, directly or indirectly, controlling such surviving entity and such new preference securities have powers, preferences or special rights that are not materially less favorable than the Series Y Preferred Stock shall not be deemed to adversely affect the powers, preferences or special rights of the Series Y Preferred Stock.

**(d) No Vote if Shares Redeemed.** No vote or consent of the holders of the Series Y Preferred Stock shall be required pursuant to Section 7(b) or 7(c) if, at or prior to the time when the act with respect to such vote or consent would otherwise be required shall be effected, the Corporation shall have redeemed or shall have called for redemption all outstanding shares of Series Y Preferred Stock, with proper notice and sufficient funds having been set aside for such redemption, in each case pursuant to Section 6 above.

**(e) Procedures for Voting and Consents.** Other than as set forth in Section 7(b), the rules and procedures for calling and conducting any meeting of the holders of Series Y Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation and By-laws of the Corporation and to applicable law.

**Section 8. Preemption and Conversion.** The holders of Series Y Preferred Stock shall not have any rights of preemption or rights to convert such Series Y Preferred Stock into shares of any other class of capital stock of the Corporation.

**Section 9. Rank.** Notwithstanding anything set forth in the Certificate of Incorporation or this Certificate of Designations to the contrary, the Board of Directors or any authorized committee of the Board of Directors, without the vote of the holders of the Series Y Preferred Stock, may authorize and issue additional shares of Junior Stock or Parity Stock.

**Section 10. Repurchase.** Subject to the limitations imposed herein, the Corporation may purchase and sell Series Y Preferred Stock from time to time to such extent, in such manner, and upon such terms as the Board of Directors or any duly authorized committee of the Board of Directors may determine; provided, however, that the Corporation shall not use any of its funds for any such purchase when there are reasonable grounds to believe that the Corporation is, or by such purchase would be, rendered insolvent.

**Section 11. Unissued or Reacquired Shares.** Shares of Series Y Preferred Stock not issued or which have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of preferred stock without designation as to series.

**Section 12. No Sinking Fund.** Shares of Series Y Preferred Stock are not subject to the operation of a sinking fund.

Second: This Certificate of Designations shall be effective at 10:00 am (Eastern Standard Time) on January 27, 2015.



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**IN WITNESS WHEREOF**, Bank of America Corporation has caused this Certificate of Designations to be executed by its duly authorized officer on this 26th day of January, 2015.

**BANK OF AMERICA CORPORATION**

By: /s/ ROSS E. JEFFRIES, JR.

Name: Ross E. Jeffries, Jr.

Title: Deputy General Counsel  
and Corporate Secretary



February 24, 2015

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

**Re: Bank of America Corporation**  
**Post-Effective Amendment No. 2 to Registration Statement on Form S-3(Registration**  
**No. 333-180488)**

Ladies and Gentlemen:

We have acted as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), in connection with the Post-Effective Amendment No. 2 (the "Post-Effective Amendment") to Registration Statement on Form S-3 (Registration No. 333-180488) (as amended by such Post-Effective Amendment, the "Registration Statement") being filed with the Securities and Exchange Commission (the "SEC") by the Corporation on or about the date of this opinion letter in connection with the registration under the Securities Act of 1933, as amended (the "Act"), of up to \$118,000,000,000 in aggregate initial offering price of (i) debt securities (the "Debt Securities"), (ii) warrants (the "Warrants"), (iii) purchase contracts (the "Purchase Contracts"), (iv) units, which are comprised of one or more securities, in any combination (the "Units"), (v) shares of preferred stock (the "Preferred Stock"), (vi) fractional interests in Preferred Stock represented by depositary shares (the "Depositary Shares") and (vii) shares of common stock (the "Common Stock"), and together with the Debt Securities, Warrants, Purchase Contracts, Units, Preferred Stock, Depositary Shares and Common Stock, the "Securities").

The Securities are described in the Registration Statement and are to be issued, separately or together, in one or more series and may be sold from time to time as set forth in the Registration Statement, the applicable prospectuses contained therein (each, a "Prospectus") and any amendments or supplements thereto. We understand that the Securities will be issued as follows:

(a) The Debt Securities, which include the Corporation's debt securities designated as its Senior Medium-Term Notes, Series L and its Subordinated Medium-Term Notes, Series L (collectively, the "Medium-Term Notes"), will be issued pursuant to: (i) that certain Senior Indenture dated January 1, 1995 between the Corporation (successor to NationsBank Corporation) and The Bank of New York Mellon Trust Company, N.A. (formerly The Bank of

New York Trust Company, N.A., the successor trustee to The Bank of New York) as trustee, as supplemented by a First Supplemental Indenture dated as of September 18, 1998, a Second Supplemental Indenture dated as of May 7, 2001, a Third Supplemental Indenture dated as of July 28, 2004, a Fourth Supplemental Indenture dated as of April 28, 2006, a Fifth Supplemental Indenture dated as of December 1, 2008 and a Sixth Supplemental Indenture dated as of February 23, 2011 (as so supplemented, and as further supplemented or amended from time to time, the "Senior Indenture") or (ii) the Subordinated Indenture dated January 1, 1995 between the Corporation (successor to NationsBank Corporation) and The Bank of New York Mellon Trust Company, N.A. (formerly The Bank of New York Trust Company, N.A., the successor trustee to The Bank of New York) as trustee, as supplemented by a First Supplemental Indenture dated as of August 28, 1998, a Second Supplemental Indenture dated as of January 25, 2007 and a Third Supplemental Indenture dated as of February 23, 2011 (as so supplemented, and as further supplemented or amended from time to time, the "Subordinated Indenture") and, together with the Senior Indenture, the "Debt Indentures") and, in the case of both (i) and (ii), in accordance with the authority of the Board of Directors of the Corporation or a duly authorized committee thereof or appointed thereby;

(b) the Purchase Contracts will be issued pursuant to a Purchase Contract Agreement (the "Purchase Contract Agreement");

(c) the Units will be issued pursuant to a Unit Purchase Agreement (the "Unit Purchase Agreement");

(d) the Warrants will be issued pursuant to a Warrant Agreement (the "Warrant Agreement"); and

(e) the Depositary Shares will be evidenced by depositary receipts ("Depositary Receipts") issued pursuant to a Deposit Agreement to be entered into among the Corporation, a depository and the holders from time to time of such Depositary Receipts (the "Deposit Agreement").

As used herein, the Indentures, the Purchase Contract Agreement, the Unit Purchase Agreement, the Warrant Agreement and the Deposit Agreement are referred to, collectively, as the "Subject Documents."

#### **Documents Reviewed**

In connection with this opinion letter, we have examined the following documents: (a) the Registration Statement, including the exhibits being filed therewith and incorporated by reference therein from previous filings made by the Corporation with the SEC and (b) the base prospectuses contained in the Registration Statement (each, a "Prospectus"). In addition we have examined and relied upon the following:

(i) certificate from the assistant secretary of the Corporation certifying as to (A) true and correct copies of the articles of incorporation and bylaws of the Corporation (the "Organizational Documents") and (B) the resolutions of the Board of Directors of the Corporation authorizing the filing of the Registration Statement and the issuance of the Securities by the Corporation, subject to (1) in the case of each issuance of Securities to be issued by the Corporation, a specific further authorization for the issuance, execution, delivery and performance by proper action of the Corporation's Board of Directors, an authorized committee thereof or appointed thereby or authorized officers (the "Authorizing Resolutions") with respect to such Securities and (2) the other qualifications set forth therein;

(ii) a certificate dated February 24, 2015 issued by the Secretary of State of the State of Delaware (the "Secretary of State"), attesting to the corporate status and good standing of the Corporation in the State of Delaware (the "Status Certificate"); and

(iii) originals, or copies identified to our satisfaction as being true copies, of such other records, documents and instruments as we have deemed necessary for the purposes of this opinion letter.

"Applicable Law" means the Delaware General Corporation Law (including statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing) and the laws of the State of New York, all as in effect on the date hereof.

#### **Assumptions Underlying Our Opinions**

For all purposes of the opinions expressed herein, we have assumed, without independent investigation, the following:

(a) Factual Matters. To the extent that we have reviewed and relied upon certificates of the Corporation or authorized representatives thereof, certain representations of the Corporation and certificates and assurances from public officials, all of such certificates, representations and assurances are accurate with regard to factual matters.

(b) Signatures. The signatures of individuals who have signed or will sign the Subject Documents are genuine and authorized.

(c) Authentic and Conforming Documents. All documents submitted to us as originals are authentic, complete and accurate, and all documents submitted to us as copies conform to authentic original documents.

(d) Organizational Status, Power and Authority and Legal Capacity of Certain Parties. All parties to the Subject Documents are or will be validly existing and in good standing

in their respective jurisdictions of formation and have or will have the capacity and full power and authority to execute, deliver and perform the Subject Documents, except that no such assumption is made as to the Corporation as of the date hereof. All individuals who have signed or will sign each Subject Document will have the legal capacity to execute such Subject Document.

(e) Authorization, Execution and Delivery of Subject Documents The Subject Documents and the documents required or permitted to be delivered thereunder have been or will be duly authorized by all necessary corporate, limited liability company, business trust, partnership or other action on the part of the parties thereto and have been or will be duly executed and delivered by such parties.

(f) Subject Documents Binding on Certain Parties The Subject Documents and the documents required or permitted to be delivered thereunder are or will be valid and binding obligations enforceable against the parties thereto in accordance with their terms, except no such assumption is made as to the Corporation.

(g) Governing Law of Certain Documents. Each Purchase Contract Agreement, Unit Purchase Agreement, Warrant Agreement and Deposit Agreement will be governed by the laws of the State of New York.

(h) Noncontravention. Neither the issuance of the Securities by the issuer thereof or the execution and delivery of the Subject Documents by any party thereto nor the performance by such party of its obligations thereunder will conflict with or result in a breach of (i) the certificate or articles of incorporation, bylaws, certificate or articles of organization, operating agreement, certificate of limited partnership, partnership agreement, trust agreement or other similar organizational documents of any such party, (ii) any law or regulation of any jurisdiction applicable to any such party, or (iii) any order, writ, injunction or decree of any court or governmental instrumentality or agency applicable to any such party or any agreement or instrument to which any such party may be a party or by which its properties are subject or bound.

(i) Governmental Approvals. All consents, approvals and authorizations of, or filings with, all governmental authorities that are required as a condition to the issuance of the Securities by the Corporation or to the execution and delivery of the Subject Documents by the parties thereto or the performance by such parties of their obligations thereunder will have been obtained or made.

(j) Registration; Trust Indenture Act. The Registration Statement will be effective under the Securities Act and the Indentures will be qualified under the Trust Indenture Act of 1939.

### **Our Opinions**

Based on and subject to the foregoing and the exclusions, qualifications, limitations and other assumptions set forth in this opinion letter, we are of the opinion that:

1. **Organizational Status.** Based solely upon its Status Certificate, the Corporation is a validly existing corporation under the laws of the State of Delaware, and is in good standing under such laws.

2. **Power and Authority.** The Corporation has the corporate power and authority to issue the Securities.

3. **Debt Securities.** With respect to any Debt Securities, including the Medium-Term Notes, when (i) Authorizing Resolutions with respect to such Debt Securities have been adopted, (ii) the terms of such Debt Securities and for their issuance and sale have been established in conformity with such Authorizing Resolutions and the applicable Indenture, (iii) such Debt Securities have been issued and sold as contemplated by the Registration Statement, the applicable Prospectus and the applicable supplement(s) to such Prospectus, (iv) the Corporation has received the consideration provided for in the applicable supplement to the Prospectus and any applicable definitive purchase, underwriting, distribution or similar agreement and (v) either (A) such Debt Securities have been completed, executed, authenticated and delivered, or (B) in the case of Medium-Term Notes represented by a master registered global senior note, the trustee under the Senior Indenture has made an appropriate entry on Schedule 1 to the master registered global senior note identifying the notes as supplemental obligations thereunder in accordance with the instructions of the Corporation, and in each case in accordance with the provisions of the applicable Indenture, such Debt Securities will constitute the valid and binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms.

4. **Common Stock.** With respect to any Common Stock, when (i) Authorizing Resolutions with respect to such Common Stock have been adopted, (ii) the terms for the issuance and sale of the Common Stock have been established in conformity with such Authorizing Resolutions, (iii) such Common Stock has been issued and sold as contemplated by the Registration Statement, the applicable Prospectus and the applicable supplement to such Prospectus, (iv) the Corporation has received the consideration provided for in the applicable supplement to the Prospectus and any applicable definitive purchase, underwriting or similar agreement, (v) such consideration per share is not less than the amount specified in the applicable Authorizing Resolutions and (vi) certificates in the form required under the laws of the State of Delaware representing the shares of such Common Stock are duly executed, countersigned, registered and delivered, if such Common Stock is certificated, such Common Stock will be validly issued, fully paid and non-assessable.

5. Preferred Stock. With respect to any Preferred Stock of any series, when (i) Authorizing Resolutions with respect to such Preferred Stock have been adopted, (ii) the terms of such series of Preferred Stock and for its issuance and sale have been established in conformity with such Authorizing Resolutions, (iii) such Preferred Stock has been issued and sold as contemplated by the Registration Statement, the applicable Prospectus and the applicable supplement to such Prospectus, (iv) the Corporation has received the consideration provided for in the applicable supplement to the Prospectus and any applicable definitive purchase, underwriting or similar agreement, (v) such consideration per share is not less than the amount specified in the applicable Authorizing Resolutions, (vi) a Certificate of Designation with respect to such series of Preferred Stock has been duly filed with the Secretary of State and (vii) certificates in the form required under the laws of the State of Delaware representing the shares of such Preferred Stock are duly executed, countersigned, registered and delivered, if such Preferred Stock is certificated, such Preferred Stock of such series will be validly issued, fully paid and non-assessable.

6. Purchase Contracts. With respect to any Purchase Contracts, when (i) Authorizing Resolutions with respect to the Purchase Contracts have been adopted, (ii) the terms of such Purchase Contracts and for their issuance and sale have been established in conformity with such Authorizing Resolutions, (iii) such Purchase Contracts have been issued and sold as contemplated by the Registration Statement, the applicable Prospectus and the applicable supplement to such Prospectus, (iv) the Corporation has received the consideration provided for in the applicable supplement to the Prospectus and any applicable definitive purchase, underwriting or similar agreement and (v) such Purchase Contracts have been authenticated or countersigned in accordance with the provisions of the Purchase Contract Agreement, as applicable, such Purchase Contracts will constitute the valid and binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms.

7. Units. With respect to any Units, when (i) Authorizing Resolutions with respect to the Units have been adopted, (ii) the terms of such Units and for their issuance and sale have been established in conformity with such Authorizing Resolutions, (iii) such Units have been issued and sold as contemplated by the Registration Statement, the applicable Prospectus and the applicable supplement to such Prospectus, (iv) the Corporation has received the consideration provided for in the applicable supplement to the Prospectus and any applicable definitive purchase, underwriting or similar agreement and (v) such Units have been authenticated or countersigned in accordance with the provisions of the Unit Purchase Agreement, as applicable, such Units will constitute the valid and binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms.

8. Warrants. With respect to any Warrants, when (i) Authorizing Resolutions with respect to the Warrants have been adopted, (ii) the terms of such Warrants and for their issuance have been established in conformity with such Authorizing Resolutions, (iii) such Warrants have been issued and sold as contemplated by the Registration Statement, the applicable Prospectus

and the applicable supplement to such Prospectus, (iv) the Corporation has received the consideration provided for in the applicable supplement to the Prospectus and any applicable definitive purchase, underwriting or similar agreement and (v) such Warrants have been authenticated or countersigned in accordance with the provisions of the Warrant Agreement, as applicable, such Warrants will constitute the valid and binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms.

9. Depository Shares. With respect to any Depository Shares, when (i) Authorizing Resolutions with respect to the Depository Shares and the related series of Preferred Stock have been adopted, (ii) the terms of such Depository Shares and related Preferred Stock and for their issuance and sale have been established in conformity with such Authorizing Resolutions, (iii) such Depository Shares have been issued and sold as contemplated by the Registration Statement, the applicable Prospectus and the applicable supplement to such Prospectus, (iv) the Corporation has received the consideration provided for in the applicable supplement to the Prospectus and any applicable definitive purchase, underwriting or similar agreement, (v) such consideration per share is not less than the amount specified in the applicable Authorizing Resolutions, (vi) a Certificate of Designation with respect to such series of Preferred Stock has been duly filed with the Secretary of State, (vii) certificates in the form required under the laws of the State of Delaware representing the shares of such Preferred Stock are duly executed, countersigned, registered and delivered, if such Preferred Stock is certificated, (v) the shares of such Preferred Stock have been deposited with the depository pursuant to the terms of the applicable Deposit Agreement, (vi) the certificates representing the Depository Receipts conform to the form of depository receipt examined by us, and (vii) the certificates representing such Depository Receipts have been duly executed, countersigned, registered and delivered by the depository in accordance with the provisions of the Deposit Agreement, such Depository Shares will be validly issued and will entitle their holders to the rights specified in the Deposit Agreement and the Depository Receipts.

10. Previously-Issued Securities. With respect to (i) any Debt Securities or any other debt securities of the Corporation or its predecessor companies issued under indentures other than the Indentures, any Depository Shares, any junior subordinated notes or debt securities (the "Junior Subordinated Notes") and any guarantees of the preferred securities of various capital trusts and limited partnerships (the "Guarantees"), in each case issued prior to the date hereof by the Corporation or its predecessor companies and currently outstanding and registered under the Registration Statement, were validly authorized and issued by the Corporation, or assumed by the Corporation by operation of law or otherwise, as the case may be, and are binding obligations of the Corporation, enforceable against the Corporation in accordance with their terms, and (ii) any shares of Preferred Stock previously issued prior to the date hereof by the Corporation and currently outstanding and registered under the Registration Statement were validly authorized and legally issued by the Corporation and are fully paid and non-assessable.



**Matters Excluded from Our Opinions**

We express no opinion with respect to the enforceability of any agreement of the Corporation as may be included in the terms of the Preferred Stock, the Debt Securities, the Junior Subordinated Notes, the Purchase Contracts, the Units, the Warrants, the Depositary Shares, the Guarantees or in any Subject Document: (a) relating to indemnification, contribution or exculpation from costs, expenses or other liabilities that is contrary to public policy or applicable law; (b) to submit to the jurisdiction of any specific federal or state court (other than the enforceability in a court of the State of New York of any such agreement to submit to the jurisdiction of a court of the State of New York); (c) to waive any objection to the laying of the venue or to waive the defense of *forum non conveniens* in any action or proceeding referred to therein; (d) to waive trial by jury (other than the enforceability in a court of the State of New York or in a federal court sitting in the State of New York and applying New York law to any such waiver); (e) to effect service of process in any particular manner or to establish evidentiary standards; (f) regarding the choice of governing law (other than the enforceability in a court of the State of New York or in a federal court sitting in the State of New York and applying New York law to any such agreement that the laws of the State of New York shall govern); (g) providing for the severability of provisions therein; (h) providing for arbitration; or (i) to the effect that rights or remedies are not exclusive, that every right or remedy is cumulative and may be exercised in addition to any other right or remedy, that the election of some particular remedy does not preclude recourse to one or more others or that failure to exercise or delay in exercising rights or remedies will not operate as a waiver of any such right or remedy.

**Qualifications and Limitations Applicable to Our Opinions**

The opinions set forth above are subject to the following qualifications and limitations:

- (a) **Applicable Law**. Our opinions are limited to the Applicable Law, and we do not express any opinion concerning any other law.
- (b) **Bankruptcy**. Our opinions are subject to the effect of any applicable bankruptcy, insolvency (including, without limitation, laws relating to preferences, fraudulent transfers and equitable subordination), reorganization, moratorium and other similar laws affecting creditors' rights generally.
- (c) **Equitable Principles**. Our opinions are subject to the effect of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing.
- (d) **Choice of New York Law and Forum**. To the extent that any opinion relates to the enforceability of the choice of New York law or any choice of New York forum provisions of any Subject Document, our opinion is rendered in reliance upon N.Y. Gen. Oblig. Law §§ 5-1401 and 5-1402 (McKinney 2011) and N.Y. CPLR 327(b) (McKinney 2011) and is subject to

the qualification that such enforceability may be limited by principles of public policy, comity and constitutionality. We express no opinion as to whether a United States federal court would have subject-matter or personal jurisdiction over a controversy arising under the Subject Documents.

(e) Currency Conversion. We advise you that a judgment for money relating to any obligation under a Security or a Subject Document denominated in a currency other than United States dollars ordinarily would be rendered or enforced only in United States dollars by a court of the State of New York or a United States court sitting in the State of New York and applying New York law. The method used to determine the rate of conversion of a foreign currency into United States dollars will depend on various factors. We express no opinion as to whether a court would award a judgment in a currency other than U.S. dollars or the particular date or rate of exchange that would be used by such court in the entry of a judgment.

#### Miscellaneous

The foregoing opinions are being furnished only for the purpose referred to in the first paragraph of this opinion letter. We hereby consent to the filing of this opinion as Exhibit 5.1 to the Post-Effective Amendment on or about the date hereof, to the incorporation by reference of this opinion of counsel into the Registration Statement and to the reference to our firm in each applicable Prospectus under the caption "Legal Matters." In addition, if a supplement to the applicable Prospectus relating to the offer and sale of any particular Medium-Term Note or Medium-Term Notes is prepared and filed by the Corporation with the SEC on a future date, and the supplement contains a reference to us and our opinion substantially in the form set forth below, this consent shall apply to such reference to us and our opinion in substantially such form:

"In the opinion of McGuireWoods LLP, as counsel to the Corporation, [when the notes offered hereby have been completed and executed by the Corporation, and authenticated by the trustee] [when the trustee has made an appropriate entry on Schedule 1 to the Master Registered Global Senior Note, dated March 30, 2012 (the "Master Note") identifying the notes offered hereby as supplemental obligations thereunder in accordance with the instructions of the Corporation] and the notes have been delivered against payment therefor as contemplated in this pricing supplement and the related prospectus and prospectus supplement, all in accordance with the provisions of the indenture governing the notes, such notes will be legal, valid and binding obligations of the Corporation, subject to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other similar laws affecting the rights of creditors now or hereafter in effect, and to equitable principles that may limit the right to specific enforcement of remedies, and further subject to the application of principles of public policy. This opinion is given as of the date hereof and is limited to the laws of the State of New York and the Delaware General Corporation Law (including the statutory provisions, all

applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing). In addition, this opinion is subject to [the assumption that the trustee's certificate of authentication of the Master Note has been manually signed by one of the trustee's authorized officers and to] customary assumptions about the trustee's authorization, execution and delivery of the indenture governing the notes, the validity, binding nature and enforceability of the indenture governing the notes with respect to the trustee, the legal capacity of natural persons, the genuineness of signatures, the authenticity of all documents submitted to McGuireWoods LLP as originals, the conformity to original documents of all documents submitted to McGuireWoods LLP as photocopies thereof, the authenticity of the originals of such copies and certain factual matters, all as stated in the letter of McGuireWoods LLP dated February 24, 2015, which has been filed as an exhibit to the Corporation's Post-Effective Amendment No. 2 to Registration Statement relating to the notes filed with the Securities and Exchange Commission on February 24, 2015. [This opinion is also subject to the limitations, as stated in such letter, of the enforcement of Medium-Term Notes denominated or payable in a currency other than U.S. dollars.]"

In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/s/ McGuireWoods LLP

February 24, 2015

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

Ladies and Gentlemen:

We have acted as counsel to Bank of America Corporation, a Delaware corporation (the "Company"), in connection with the Post-Effective Amendment No. 2 (the "Post-Effective Amendment") to Registration Statement on Form S-3, Registration No. 333-180488 (as amended by such Post-Effective Amendment, the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), on the date hereof and the Prospectus which is included in the Post-Effective Amendment (the "Prospectus") relating to the proposed issuance and sale from time to time by the Company of up to \$7,000,000,000 in aggregate initial offering price of its unsecured senior debt securities designated the "Senior Bank of America Corporation InterNotes<sup>®</sup>" (the "Senior Notes") and its unsecured subordinated debt securities designated the "Subordinated Bank of America Corporation InterNotes<sup>®</sup>" (the "Subordinated Notes" and together with the Senior Notes the "Notes"), as set forth in the Prospectus and supplements thereto.

The Notes are to be issued under the terms of (a) the Amended and Restated Senior Indenture dated July 1, 2001 between the Company and The Bank of New York Mellon Trust Company, N.A. (formerly The Bank of New York Trust Company, N.A., the successor trustee to The Bank of New York) as trustee, as supplemented by a First Supplemental Indenture dated as of February 23, 2011 (as so supplemented, and as further supplemented or amended from time to time, the "Senior Indenture") or (b) the Amended and Restated Subordinated Indenture dated July 1, 2001 between the Company and The Bank of New York Mellon Trust Company, N.A. (formerly The Bank of New York Trust Company, N.A., the successor trustee to The Bank of New York) as trustee, as supplemented by a First Supplemental Indenture dated as of February 23, 2011 (as so supplemented, and as further supplemented or amended from time to time, the "Subordinated Indenture" and, together with the Senior Indenture, the "Indentures"), as applicable.

In connection with this opinion letter, we have examined the Registration Statement and the Prospectus, the Indentures, the Master Registered Global Senior Note, dated July

16, 2014, representing the Senior Notes (the "Master Senior Note") and the Master Registered Global Subordinated Note, dated July 16, 2014, representing the Subordinated Notes (the "Master Subordinated Note" and together with the Master Senior Note, the "Master Notes"), certificates of officers of the Company and of public officials, and originals or copies of such other records, documents and instruments as we have deemed necessary for the purposes of this opinion letter.

As used herein, the term "Applicable Law" means the Delaware General Corporation Law (including statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing) and the laws of the State of New York, all as in effect on the date hereof.

Assumptions Underlying Our Opinion

For all purposes of the opinion expressed herein, we have assumed, without independent investigation, the following:

- (a) Factual Matters. To the extent we have reviewed and relied upon certificates of the Company or authorized representatives thereof, and certificates and assurances from public officials, all of such certificates and assurances are accurate with regard to factual matters.
- (b) Signatures, Authentic and Conforming Documents, Legal Capacity. The signatures of individuals who have signed or will sign documents submitted to us are genuine and authorized, all documents submitted to us as originals are authentic, complete and accurate, all documents submitted to us as copies conform to authentic original documents and all individuals who have signed or will sign documents submitted to us have or will have the legal capacity to execute such document.
- (c) Organizational Status, Power and Authority. All parties to the Indentures and the Notes are or will be validly existing and in good standing in their respective jurisdictions of formation and have or will have the capacity and full power and authority to execute, deliver and perform such documents, except that no such assumption is made as to the Company as of the date hereof.
- (d) Authorization, Execution and Delivery of Documents. The Indentures and the Notes have been or will be duly authorized by all necessary corporate, limited liability company, business trust, partnership or other action on the part of the parties thereto and have been or will be duly executed and delivered by such parties, except that no such assumption is made as to the Company as of the date hereof.
- (e) Documents Binding on Certain Parties. The Indentures and the Notes are or will be valid and binding obligations enforceable against the parties thereto in accordance with their terms, except no such assumption is made as to the Company.
- (f) Noncontravention. Neither the issuance of the Notes by the Company, the execution and delivery of the Indentures and the Notes by any party thereto nor the

performance by such party of its obligations thereunder will conflict with or result in a breach of (i) the certificate or articles of incorporation, bylaws, certificate or articles of organization, operating agreement, certificate of limited partnership, partnership agreement, trust agreement or other similar organizational documents of any such party, (ii) any law or regulation of any jurisdiction applicable to any such party, or (iii) any order, writ, injunction or decree of any court or governmental instrumentality or agency applicable to any such party or any agreement or instrument to which any such party may be a party or by which its properties are subject or bound.

(g) Governmental Approvals. All consents, approvals and authorizations of, or filings with, all governmental authorities that are required as a condition to the issuance of the Notes by the Company or to the execution and delivery of the Indentures and the Notes by the parties thereto or the performance by such parties of their obligations thereunder will have been obtained or made.

(h) Registration. The Registration Statement is effective under the Securities Act and such effectiveness shall not have been terminated or rescinded.

#### Our Opinion

Based solely upon the foregoing, and in reliance thereon, and subject to the limitations, qualifications and exceptions set forth below, we are of the opinion that, when the terms of the Notes have been duly authorized and established by the Company and the applicable Master Note has been duly authenticated in accordance with the terms of the Senior Indenture or the Subordinated Indenture, as applicable; the trustee under the applicable Indenture has made an appropriate entry on Schedule 1 to the applicable Master Note, identifying the Notes as supplemental obligations thereunder in accordance with the instructions of the Company; and the Notes have been delivered against payment of the consideration therefor as contemplated by the Prospectus, the applicable supplement thereto relating to the Notes and the applicable underwriting or distribution agreement, the Notes will constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

#### Qualifications and Limitations Applicable to Our Opinions

The opinions set forth above are subject to the following qualifications and limitations:

(a) Applicable Law. Our opinions are limited to the Applicable Law, and we do not express any opinion concerning any other law.

(b) Bankruptcy. Our opinions are subject to the effect of any applicable bankruptcy, insolvency (including, without limitation, laws relating to preferences, fraudulent transfers and equitable subordination), reorganization, moratorium and other similar laws affecting creditors' rights generally.

(c) Equitable Principles. Our opinion is subject to the effect of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing.

Miscellaneous

We hereby consent to the filing of this opinion as Exhibit 5.5 to the Post-Effective Amendment on or about the date hereof, to the incorporation by reference into the Registration Statement and to the reference to our firm in the Prospectus under the caption "Legal Matters."

In addition, if a pricing supplement to the Prospectus relating to the offer and sale of any particular Note or Notes is filed by the Company with the Commission on a future date, and the supplement contains a reference to us and our opinion substantially in the form set forth below, we consent to including that opinion as part of the Registration Statement and further consent to the reference to our name in the opinion:

"In the opinion of McGuireWoods LLP, as counsel to Bank of America Corporation (the "Company"), when the trustee has made an appropriate entry on Schedule 1 to the Master Registered Global [Senior] [Subordinated] Note, dated July 16, 2014 (the "Master Note"), identifying the notes offered hereby as supplemental obligations thereunder in accordance with the instructions of the Company, and the notes have been delivered against payment therefor as contemplated in this supplement and the related prospectus, all in accordance with the provisions of the indenture governing the notes, such notes will be legal, valid and binding obligations of the Company, subject to the effect of applicable bankruptcy, insolvency (including laws relating to fraudulent transfers and equitable subordination), reorganization, moratorium and other similar laws affecting creditors' rights generally, and to general principles of equity. This opinion is given as of the date hereof and is limited to the laws of the State of New York and the Delaware General Corporation Law (including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing). In addition, this opinion is subject to customary assumptions about the trustee's authorization, execution and delivery of the indenture governing the notes and due authentication of the Master Note, the validity, binding nature and enforceability of the indenture governing the notes with respect to the trustee, the legal capacity of natural persons, the genuineness of signatures, the authenticity of all documents submitted to McGuireWoods LLP as originals, the conformity to original documents of all documents submitted to McGuireWoods LLP as copies thereof, the authenticity of the originals of such copies and certain factual matters, all as stated in the letter of McGuireWoods LLP dated February 24, 2015, which has been filed as an exhibit to the Company's Post-Effective Amendment No. 2 to the Registration Statement relating to the notes filed with the Securities and Exchange Commission on February 24, 2015."

In giving this consent, we do not admit thereby that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ McGuireWoods LLP



MORRISON | FOERSTER

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SAN FRANCISCO, SHANGHAI, SINGAPORE, TOKYO,  
WASHINGTON, D.C.

February 24, 2015

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

Ladies and Gentlemen:

We have acted as tax counsel to Bank of America Corporation (the "Corporation"), a Delaware corporation, in connection with the filing of Post-Effective Amendment No.2 (the "Post-Effective Amendment") to the shelf registration statement on Form S-3 by the Corporation (as amended by the Post-Effective Amendment, the "Registration Statement").

We hereby confirm that, although the respective discussions set forth under the heading "U.S. Federal Income Tax Considerations" in the prospectuses filed with the Registration Statement do not purport to discuss all possible United States federal income tax consequences of the purchase, ownership and disposition of the securities described in each such prospectus, in our opinion, each such discussion constitutes, in all material respects, a fair and accurate summary of the United States federal income tax consequences of the purchase, ownership and disposition of such securities, based upon current law. It is possible that contrary positions may be taken by the Internal Revenue Service and that a court may agree with such contrary positions.

We hereby consent to the use of our name under the headings "U.S. Federal Income Tax Considerations" and "Legal Matters" in the prospectuses filed as of the date hereof. We further consent to your filing a copy of this opinion as Exhibit 8.1 to the Post-Effective Amendment. In giving such permission, we do not admit hereby that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. This opinion is expressed as of the date hereof and applies only to the disclosure under the heading "U.S. Federal Income Tax Considerations" set forth in the prospectuses filed as of the date hereof. We disclaim any undertaking to advise you of any subsequent changes of the facts stated or assumed herein or any subsequent changes in applicable law.

Very truly yours,

/s/ Morrison & Foerster LLP



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WASHINGTON, D.C.

February 24, 2015

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

Re: Bank of America Corporation InterNotes<sup>®</sup> due nine months or more from date of issue

Ladies and Gentlemen:

We have acted as tax counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), in connection with the filing by the Corporation with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), of the Post-Effective Amendment No. 2 (the "Post-Effective Amendment") to its shelf registration statement on Form S-3 (File No. 333-180488) (as amended by the Post-Effective Amendment, the "Registration Statement") and the prospectus dated February 24, 2015 (the "Prospectus") relating to the proposed issuance and sale from time to time by the Corporation of up to \$7,000,000,000 in aggregate initial offering price of securities of the Corporation's InterNotes<sup>®</sup> due nine months or more from date of issue (the "Notes").

In that connection, we have reviewed the Registration Statement and the Prospectus and made such legal and factual examinations and inquiries, as we have deemed necessary or appropriate for purposes of our opinion. In rendering this opinion, we have, with the consent of the Corporation, relied upon the accuracy of the facts, representations and other matters set forth in the Registration Statement and the Prospectus. In our examination of documents, we have assumed the authenticity of original documents, the accuracy of copies, the genuineness of signatures, the legal capacity of signatories, and the proper execution of the documents. We have further assumed that all parties to the documents have acted, and will act, in accordance with the terms and conditions of such documents, including any covenants and agreements contained therein, without the waiver or modification of any such terms, conditions, covenants or agreements. We have not attempted to verify independently such assumptions. Terms defined in any of the foregoing documents shall be defined for purposes of this opinion as defined therein.

We hereby confirm that, although the discussion set forth under the heading "Tax Consequences to U.S. Holders" in the Prospectus does not purport to discuss all possible United States federal income tax consequences of the purchase, ownership and disposition of the

securities described in the prospectus, in our opinion, such discussion constitutes, in all material respects, a fair and accurate summary of the United States federal income tax consequences of the purchase, ownership and disposition of such securities, based upon current law as contained in the Internal Revenue Code of 1986, as amended (the "Code"), final and temporary Treasury Regulations promulgated thereunder (the "Treasury Regulations"), administrative pronouncements of the Internal Revenue Service ("IRS") and court decisions as of the date hereof. The provisions of the Code and the Treasury Regulations, IRS administrative pronouncements and case law upon which this opinion is based could be changed at any time, perhaps with retroactive effect. In addition, some of the issues under existing law that could significantly affect our opinion have not yet been authoritatively addressed by the IRS or the courts, and our opinion is not binding on the IRS or the courts. Hence, there can be no assurance that the IRS will not challenge, or that the courts will agree with, our conclusions.

We undertake no obligation to update this opinion, or to ascertain after the date hereof whether circumstances occurring after such date may affect the conclusions set forth herein. We express no opinion as to matters governed by any laws other than the Code, the Treasury Regulations, published administrative announcements and rulings of the IRS, and court decisions.

We hereby consent to the use of our name under the headings "Tax Consequences to U.S. Holders" and "Legal Matters" in the Prospectus. We further consent to your filing a copy of this opinion as an exhibit to the Post-Effective Amendment and to the incorporation by reference into the Registration Statement. In giving such permission, we do not admit hereby that we come within the category of persons whose consent is required under Section 7 of the Securities Act, or the rules and regulations of the Commission thereunder. This opinion is expressed as of the date hereof and applies only to the disclosure under the heading "Tax Consequences to U.S. Holders" set forth in the Prospectus filed as of the date hereof.

Very truly yours,

/s/ Morrison & Foerster LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Post-Effective Amendment No. 2 to the Registration Statement on Form S-3 (Registration No. 333-180488) of our report dated February 25, 2014 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Bank of America Corporation's Annual Report on Form 10-K for the year ended December 31, 2013. We also consent to the reference to use under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers, LLP

Charlotte, NC

February 24, 2015

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each of the undersigned officers and directors of Bank of America Corporation (the "Company"), whose signatures appear below, hereby makes, constitutes and appoints Gary G. Lynch and Ross E. Jeffries, Jr., and each of them acting individually, his or her true and lawful attorneys with power to act without any other and with full power of substitution, to prepare, execute, deliver and file with the Securities and Exchange Commission under the Securities Act of 1933, as amended, in his or her name and on his or her behalf, and in each of the undersigned's capacity or capacities as shown below,

- (i) any and all amendments (including post-effective amendments) to the Company's Registration Statement on Form S-3ASR, File No. 333-180488;
- (ii) a shelf Registration Statement on Form S-3 registering the Company's securities, which may be offered from time to time, or may be reoffered or resold in market-making transactions by affiliates of the Company, and any and all amendments thereto (including post-effective amendments); and
- (iii) a Registration Statements on Form S-8 registering shares of the Company's common stock for issuance under the Bank of America 2003 Key Associate Stock Plan, as amended and restated, and any and all amendments thereto (including post-effective amendments),

granting unto said attorneys full power and authority to do and perform every act and thing necessary or incidental to the performance and execution of the powers granted herein, and ratifying and confirming all acts and things which said attorneys might do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, 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.

| <u>Signature</u>                                  | <u>Title</u>   | <u>Date</u>       |
|---|--|-------------------|
| <u>/s/ Brian T. Moynihan</u><br>Brian T. Moynihan | Chief Executive Officer,<br>Chairman and Director<br>(Principal Executive Officer) | February 24, 2015 |
| <u>/s/ Bruce R. Thompson</u><br>Bruce R. Thompson | Chief Financial Officer<br>(Principal Financial Officer)                           | February 23, 2015 |
| <u>/s/ Neil A. Cotty</u><br>Neil A. Cotty         | Chief Accounting Officer<br>(Principal Accounting Officer)                         | February 23, 2015 |

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|---|----------|-------------------|
| <u>/s/ Sharon L. Allen</u><br>Sharon L. Allen                   | Director | February 23, 2015 |
| <u>/s/ Susan S. Bies</u><br>Susan S. Bies                       | Director | February 23, 2015 |
| <u>/s/ Jack O. Bovender, Jr.</u><br>Jack O. Bovender, Jr.       | Director | February 23, 2015 |
| <u>/s/ Frank P. Bramble, Sr.</u><br>Frank P. Bramble, Sr.       | Director | February 21, 2015 |
| <u>/s/ Pierre J. P. de Weck</u><br>Pierre J. P. de Weck         | Director | February 23, 2015 |
| <u>/s/ Arnold W. Donald</u><br>Arnold W. Donald                 | Director | February 20, 2015 |
| <u>/s/ Charles K. Gifford</u><br>Charles K. Gifford             | Director | February 23, 2015 |
| <u>/s/ Charles O. Holliday, Jr.</u><br>Charles O. Holliday, Jr. | Director | February 22, 2015 |
| <u>/s/ Linda P. Hudson</u><br>Linda P. Hudson                   | Director | February 23, 2015 |
| <u>/s/ Monica C. Lozano</u><br>Monica C. Lozano                 | Director | February 20, 2015 |
| <u>/s/ Thomas J. May</u><br>Thomas J. May                       | Director | February 18, 2015 |
| <u>/s/ Lionel L. Nowell, III</u><br>Lionel L. Nowell, III       | Director | February 16, 2015 |
| <u>/s/ Clayton S. Rose</u><br>Clayton S. Rose                   | Director | February 23, 2015 |
| <u>/s/ R. David Yost</u><br>R. David Yost                       | Director | February 20, 2015 |