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DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-3010



09035360

February 24, 2009

Andrew A. Gerber
Hunton & Williams LLP
Bank of America Plaza
Suite 3500
101 South Tryon Street
Charlotte, NC 28280

RECEIVED
FEB 24 2009
Washington, DC 20549

Act: 1934
Section: _____
Rule: 19a-8
Public
Availability: 2-24-09

Re: Bank of America Corporation
Incoming letter dated December 23, 2008

Dear Mr. Gerber:

This is in response to your letters dated December 23, 2008, December 29, 2008, January 2, 2009, January 8, 2009, January 13, 2009, and January 21, 2009 concerning the shareholder proposals submitted to Bank of America by the Indiana Laborers Pension Fund, the AFSCME Employees Pension Plan, Andrea Loyd Bell, and Donald M. and Judith A. Schwartz. We also have received a letter from the AFSCME Employees Pension Plan dated January 13, 2009 and a letter from the Indiana Laborers Pension Fund dated January 26, 2009. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponents.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples
Senior Special Counsel

Enclosures

cc: Michael J. Short
Secretary-Treasurer
Indiana Laborers Pension Fund
P.O. Box. 1587
Terre Haute, IN 47808-1587

Bank of America Corporation
February 24, 2009
Page 2 of 2

cc: Charles Jurgonis
Plan Secretary
AFSCME Employees Pension Plan
1625 L Street, N.W.
Washington, DC 20036-5687

Andrea Loyd Bell

*** FISMA & OMB Memorandum M-07-16 ***

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

February 24, 2009

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Bank of America Corporation
Incoming letter dated December 23, 2008

The first proposal urges, given the company's participation in the Capital Purchase Program established under the Troubled Asset Relief Program, that the board and its compensation committee implement specified executive compensation reforms that impose limitations on senior executive compensation. The second proposal urges the board's compensation and benefits committee to adopt a policy requiring senior executives to retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment, and to report to stockholders regarding the policy before Bank of America's 2010 annual meeting of stockholders. The third proposal relates to incentive plans. The fourth proposal recommends that top tier management voluntarily and temporarily reduce their compensation in all forms by 50% until such time as the stock regains a price of 50% of its all-time high, with full dividend restoration.

We are unable to concur in your view that Bank of America may exclude the first proposal under rule 14a-8(c). Accordingly, we do not believe that Bank of America may omit the first proposal from its proxy materials in reliance on rule 14a-8(c).

We are unable to concur in your view that Bank of America may exclude the first proposal under rule 14a-8(i)(3). Accordingly, we do not believe that Bank of America may omit the first proposal from its proxy materials under rule 14a-8(i)(3).

There appears to be some basis for your view that Bank of America may exclude the second proposal under rule 14a-8(i)(11) as substantially duplicative of the first proposal that will be included in Bank of America's 2009 proxy materials. Accordingly, we will not recommend enforcement action to the Commission if Bank of America omits the second proposal from its proxy materials in reliance on rule 14a-8(i)(11).

There appears to be some basis for your view that Bank of America may exclude the third proposal under rule 14a-8(f). We note that the proponent appears to have failed to supply, within 14 days of receipt of Bank of America's request, documentary support sufficiently evidencing that she satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if Bank of America omits the third proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission of the third proposal upon which Bank of America relies.

Bank of America Corporation
February 24, 2009
Page 2 of 2

There appears to be some basis for your view that Bank of America may exclude the fourth proposal under rule 14a-8(i)(13). Accordingly, we will not recommend enforcement action to the Commission if Bank of America omits the proposal from its proxy materials in reliance on rule 14a-8(i)(13). In reaching this position, we have not found it necessary to address the alternative bases for omission of the fourth proposal upon which Bank of America relies.

Sincerely,

Jay Knight
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

INDIANA LABORERS PENSION FUND

P.O. Box 1587 • Terre Haute, Indiana 47808-1587
Telephone 812-238-2551 • Toll Free 800-962-3158 • Fax 812-238-2553

January 26, 2009

U.S. Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-1090

RECEIVED
2009 FEB -9 PM 3:00
OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: Bank of America Corporation's No-action Request Regarding Shareholder Proposal Submitted by the Indiana Laborers Pension Fund

Dear Sir or Madam:

The Indiana Laborers Pension Fund (the "Fund") hereby submits this letter in reply to Bank of America Corporation's ("BoA" or "Company") Request for No-Action Advice to the Security and Exchange Commission's Division of Corporation Finance ("Staff") concerning the Fund's Executive Compensation Reforms proposal ("Proposal") and supporting statement submitted to the Company for inclusion in its 2009 proxy materials. The Fund respectfully submits that the Company has failed to satisfy its burden of persuasion and should not be granted permission to exclude the Proposal. Pursuant to Rule 14a-8(k), six paper copies of the Fund's response are hereby included and a copy has been provided to the Company.

The Proposal urges the Board of Directors and its compensation committee to implement a recommended set of reforms that imposes important limitations on senior executive compensation given Regions' decision to participate in the Troubled Asset Relief Program ("TARP") established by the Economic Emergency Stabilization Act ("EESA").

BoA contends that it is entitled to exclude the Proposal in reliance on Rules 14a-9 and 14a-8(i)(3) and 14a-8(c).

It is well-established that shareholder proposals concerning the executive compensation of senior executives are appropriate for inclusion in proxy materials and the Company should not be permitted to exclude the Proposal from its 2009 proxy materials.

I. The Proposal Is Neither False Nor Misleading and the Company Should Not Be Permitted to Exclude it Pursuant to Rules 14a-9 and 14a-8(i)(3)

Relying on Rule 14a-8(i)(3) and Rule 14a-9, the Company contends that the Proposal contains statements that are misleading on account of being vague and indefinite and therefore may be excluded under Rule 14a-9 and 14a-8(i)(3). The Company faces a very high burden when it

ERIC C. COOK
CHAIRMAN

OFFICERS - BOARD OF TRUSTEES

MICHAEL J. SHORT
SECRETARY-TREASURER

JANETTA E. ENGLAND
ADMINISTRATIVE MANAGER

seeks to exclude the Proposal as false and misleading—a burden the Company fails to meet.

A. The Proposal is Neither Vague Nor Indefinite

In a supplemental request for no-action relief dated January 8, 2009, the Company seeks permission to exclude the Proposal by arguing that it is vague and indefinite. To be entitled to such relief, the Company must demonstrate that “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” *Staff Legal Bulletin 14B (Sept. 15, 2004)*

The Company’s basis for this supplemental letter is apparently the Staff’s recent decision in *SunTrust Banks, Inc.* (Dec. 31, 2008) which found a substantially similar shareholder proposal excludable under Rule 14a-8(i)(3) as vague and indefinite. However, that Staff decision explicitly relied upon language in the proponent’s comment in its response to the company’s no-action request to glean some apparent vagueness between the proponent’s intent and the literal language of the proposal. The Staff stated:

There appears to be some basis for your view that SunTrust may exclude the proposal under Rule 14a-8(i)(3) as vague and indefinite. In arriving at this position, we note the proponent’s statement that the ‘intent of the Proposal is that the executive compensation reforms urged in the Proposal remain in effect so long as the company participates in the TARP.’ By its terms, however, the proposal appears to impose no limitation on the duration of the specified reforms. Accordingly, we will not recommend enforcement action to the Commission if SunTrust omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Unless the reference to the proponent’s statement is gratuitous, one must logically conclude it is that very proponent’s statement that creates the vagueness and indefiniteness upon which the Staff relied. Otherwise, the Staff would simply have noted that the proposal imposed no limitation on the duration of the specified reforms. The Staff could not so conclude, though, for it is well established that shareholder proposals seeking executive compensation reforms are not required to specify limitations on duration and so are not subject to exclusion under Rule 14a-8(i)(3).

The Proposal seeks a number of reforms that are clearly stated, easy to understand, and would create no confusion for either the Company or shareholders voting on them. It is neither surprising nor grounds for omission that the Proposal does not specify time periods. Neither have innumerable shareholder proposals requesting that companies expense their stock options, reform their executive compensation by establishing pay-for-superior performance, index stock options to peer-group performance, require that future equity compensation grants be performance-vested, or a myriad of other executive compensation proposals. If the Fund’s precatory proposal passes and the board chooses to implement the requested reforms, it will

exercise its discretion to determine their duration, just as it would have to do were it to implement any other reform requested by shareholders.

The Company also cites *Wendy's International, Inc.*, (Feb. 24, 2006) as an example of a proposal that did not state the duration of its requirements and that the Staff determined to be excludable as vague and indefinite. However, in *Wendy's* the company argued – and the Staff concurred – that it was the proponent's failure to define certain key terms that rendered the proposal excludable. As the Staff noted,

The proposal requests that the board issue interim reports to shareholders that detail the progress made toward 'accelerating development' of controlled-atmosphere killing. There appears to be some basis for your view that *Wendy's* may exclude the proposal under rule 14a-8(i)(3), as vague and indefinite.

Thus, the proposal in *Wendy's* was excluded due to the failure to define key terms, not failing to specify time limits, and is irrelevant to the instant case.

II. The Proposal Does Not Contain Multiple Proposals and the Company Fails to Satisfy Its Burden of Persuasion Under Rule 14a-8(c)

The Company also argues that the Proposal contains multiple proposals in violation of Rule 14a-8(c). The basis for this argument is that components of the Proposal have appeared as separate proposals in the past at some companies and that the Proposal relates to disparate aspects of executive compensation.

A single proposal made up of several separate components does not constitute more than one proposal if the components "are closely related and essential to a single-well defined unifying concept." *AT&T Wireless Services, Inc.* (avail. Feb. 11, 2004)

In *AT&T Wireless Services, Inc.*, a proposal was submitted requesting the board to replace its system of compensation for senior executives with a "Commonsense Executive Compensation" program. That proposal's resolution provided:

Resolved, that the shareholders of AT&T Wireless Services Inc. ("Company") request that the Company's Board of Directors and its Executive Compensation Committee replace the current system of compensation for senior executives with the following "Commonsense Executive Compensation" program including the following features:

- (1) Salary - The chief executive officer's salary should be targeted at the mean of salaries paid at peer group companies, not to exceed \$ 1,000,000 annually. No senior executive should be paid more than the CEO.

(2) Annual Bonus - The annual bonus paid to senior executives should be based on well-defined quantitative (financial) and qualitative (non-financial) performance measures. The maximum level of annual bonus should be a percentage of the executive's salary level, capped at 100% of salary.

(3) Long-Term Equity Compensation - Long-term equity compensation to senior executives should be in the form of restricted shares, not stock options. The restricted share program should utilize justifiable performance criteria and challenging performance benchmarks. It should contain a vesting requirement of at least three years. Executives should be required to hold all shares awarded under the program for the duration of their employment. The value of the restricted share grant should not exceed \$1,000,000 on the date of grant.

(4) Severance - The maximum severance payment to a senior executive should be no more than one year's salary and bonus.

(5) Disclosure - Key components of the executive compensation plan should be outlined in the Compensation Committee's report to shareholders, with variances from the Commonsense program explained in detail.

The Commonsense compensation program should be implemented in a manner that does not violate any existing employment agreement or equity compensation plans.

Like the Proposal submitted by the Fund, the "Commonsense" Proposal had multiple components and the company sought to exclude it under Rule 14a-8(c). The company failed in that case, as Regions should here. The proponent noted in *AT&T Wireless Services, Inc.*:

As the Company acknowledges, our Proposal relates to senior executive compensation. It focuses on all aspects of such compensation, including salary, bonus, long-term equity compensation, severance, and disclosure. That certain compensation is triggered by the severance of employment in no way renders severance payments to senior executives as a distinct topic. Shareholders are concerned about all aspects of senior executive compensation and our Proposal properly addresses several different aspects, including severance.

The Fund's Proposal relates to the reform of senior executive compensation and provides a set of complementary executive compensation changes. The proposed reforms are closely related and essential to the unified concept of senior executive compensation reform. For these reasons, the Company has failed to satisfy its burden under Rule 14a-8(c) and its request should be denied.

III. Conclusion


For the foregoing reasons, the Proponent respectfully submits that the Company has failed to

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January 26, 2009
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satisfy its burden of persuasion and should be denied its request to be allowed to exclude the Proposal.

Should the staff have any questions, please contact Ms. Jennifer O'Dell, Assistant Director of the LIUNA Department of Corporate Affairs, at (202) 942-2359, or via email at jodell@liuna.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Short". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael J. Short
Secretary-Treasurer

Cc: Jennifer O'Dell



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ANDREW A. GERBER
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FILE NO: 46123.74

January 21, 2009

Rule 14a-8

BY ELECTRONIC MAIL

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Supplemental Letter for Stockholder Proposals Submitted by the American Federation of State,
County and Municipal Employees ("AFSCME")

Ladies and Gentlemen:

By letter dated December 23, 2008 (the "Initial Letter"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted a proposal (the "AFSCME Proposal") submitted by AFSCME from its proxy materials for the 2009 Annual Meeting for the reasons set forth therein. In response to the Initial Letter, AFSCME submitted a letter (the "AFSCME Letter") dated January 13, 2009 to the Division. The AFSCME Letter is attached hereto as **Exhibit A**.

As counsel to the Corporation, we hereby supplement the Initial Letter and request confirmation that the Division will not recommend enforcement action if the Corporation omits the AFSCME Proposal from its proxy materials for the 2009 Annual Meeting for the additional reason set forth herein. This letter is intended to supplement, but does not replace, the Initial Letter. A copy of this letter is also being sent to AFSCME.

The Initial Letter argued that the AFSCME Proposal was substantially duplicative of a proposal previously submitted to the Corporation by the Indiana Laborers Pension Fund (the "ILPF Proposals" and together with the AFSCME Proposal, the "Proposals"). In the event that the Division does not concur with our view that the ILPF Proposals may be excluded under Rule 14a-8, the Corporation will include the ILPF Proposals in its proxy materials for its 2009 Annual Meeting.



Securities and Exchange Commission
January 21, 2009
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The ILPF Proposals

The ILPF Proposals urge the Board of Directors and its compensation committee to implement a “set of executive compensation reforms that impose important limitations on senior executive compensation” including among other things, the adoption of a “strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards.”

The AFSCME Proposal

The AFSCME Proposal urges the Compensation and Benefits Committee of the Board of Directors (the “Committee”) “to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise).” The AFSCME Proposal further recommends that the Committee “not adopt a percentage lower than 75% of net after-tax shares.”

Exclusion of the AFSCME Proposal

As noted in the Initial Letter, the AFSCME Proposal and the ILPF Proposals have the same principal thrust, notwithstanding the fact that their specific terms of implementation vary somewhat. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would neither know which approach the stockholders prefer nor possess the ability to fully implement each Proposal due to inconsistent or conflicting provisions. Assuming that the Corporation includes both the AFSCME Proposal and the ILPF Proposals in its proxy materials for the 2009 Annual Meeting and that both proposals are approved by stockholders, the Corporation would be unable to reconcile the differences between the Proposals in order to implement each as they conflict in detail.

The AFSCME Letter argues that the Corporation could “reasonably conclude” that if the Corporation’s stockholders were to approve both Proposals, as written, the stockholders would intend to substitute “preferable” portions of the AFSCME Proposal into the ILPF Proposals. This is not a workable solution. The AFSCME Letter clearly bears this out. On page 3 of the AFSCME Letter, AFSCME assumes that stockholders would prefer the *less lenient* two-year holding period provided for in the AFSCME Proposal. Yet, in the very next paragraph, the AFSCME Letter states that the Corporation can assume that if stockholders were to approve both Proposals they would be communicating to the Corporation that they “are comfortable with the arguably *more lenient* approach taken by the [AFSCME] Proposal.” (emphasis added) The Corporation is not in a position to read stockholder minds and “reasonably conclude” that stockholders want to be less lenient in some areas of the Proposals and more lenient in other areas of the Proposals.

HUNTON & WILLIAMS

Securities and Exchange Commission

January 21, 2009

Page 3

Further, we do not believe that the Division intends to adopt a policy that would permit companies to mix and match provisions of substantially duplicative proposals with varying terms of implementation.

Finally, the logic in the AFSCME Letter assumes that the Corporation's stockholder base is uniform in its voting intentions and share the same preferences. The Corporation has a wide stockholder base and cannot assume that all stockholders would share the same preferences.

Accordingly, we request confirmation that the Division will not recommend enforcement action if the Corporation omits the AFSCME Proposal for the reasons set forth in our Initial Letter, as supplemented hereby.

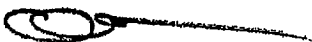
* * * * *

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposals may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
AFSCME

EXHIBIT A

See attached.



Committee
Gerald W. McEntee
William Lucy
Edward J. Keller
Kathy J. Sackman
Henry C. Scheff

EMPLOYEES PENSION PLAN

January 13, 2009

VIA ELECTRONIC MAIL

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Re: Shareholder proposal of AFSCME Employees Pension Plan; request by Bank of America Corporation for no-action determination

Dear Sir/Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the American Federation of State, County and Municipal Employees, Employees Pension Plan (the "Plan") submitted to Bank of America Corporation ("Bank of America") a shareholder proposal (the "Proposal") urging the board's Compensation and Benefits Committee to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment.

In a letter dated December 23, 2008, Bank of America stated that, under certain circumstances, it intends to omit the Proposal from its proxy materials being prepared for the 2009 annual meeting of shareholders. Specifically, Bank of America intends to exclude the Proposal if the Division does not concur with the company's argument that another proposal, submitted by the Indiana Laborers Pension Fund (the "ILPF Proposal"), can be omitted on the ground that it violates the one-proposal rule. In that case, Bank of America contends, the Proposal substantially duplicates the ILPF Proposal and therefore should be omitted.

As discussed below in more detail, the ILPF Proposal is a single proposal and, even if it is not deemed to be such by the Division, the Proposal's "principal thrust" differs substantially from the "principal thrust" of the ILPF Proposal. Accordingly, Bank of America has not met its burden of proving it is entitled to exclude the Proposal.

The ILPF Proposal Deals With Limiting Executive Compensation at Companies Participating in the TARP Capital Purchase Program

The ILPF Proposal asks Bank of America's board to implement a variety of reforms designed to limit senior executive pay: limiting the annual bonus to one times the amount of an executive's salary, requiring the use of performance-based equity for long-term incentive compensation, awarding only indexed stock options, requiring executives to retain 75% of shares obtained through equity awards, prohibiting accelerated vesting of unvested equity awards, limiting severance payments to one times the executive's salary, and freezing the accrual of benefits under any supplemental executive retirement plan.

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, N.W., Washington, D.C. 20036-5687

Bank of America argues that the ILPF Proposal violates Rule 14a-8's one-proposal rule because it asks the company to adopt seven different reforms, some of which have been the subject of standalone shareholder proposals. Although the Plan does not purport to speak for the Indiana Laborers Pension Fund, we believe that the ILPF Proposal, considered as a whole and in context, is a single proposal with the overriding theme of limiting compensation at companies, like Bank of America, that have received federal assistance under the Capital Purchase Program ("CPP") of the Treasury Department's Troubled Asset Relief Program.

The ILPF Proposal is replete with discussion regarding Bank of America's participation in the CPP. The ILPF Proposal leads with "Given that Bank of America Corporation ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury" Similarly, the supporting statement argues that the executive compensation limitations imposed by Congress on companies receiving assistance under TARP are inadequate to reform the practices that arguably contributed to the credit crisis necessitating the creation of TARP and the CPP. The supporting statement explains that the reforms urged in the Resolved section are designed to remedy this problem.

In sum, the parts of the ILPF Proposal "are closely related and essential to a single well-defined unifying concept" of limiting senior executive compensation at financial institutions participating in the CPP.

The Proposal Does Not Substantially Duplicate the ILPF Proposal Because Their Principal Thrusts Differ

Assuming the ILPF Proposal is included in Bank of America's proxy statement, Bank of America argues that it may exclude the Proposal as substantially duplicative of the ILPF Proposal. It is the case that one element of the ILPF Proposal imposes a retention ratio on senior executives, which is the sole subject of the Proposal.

The expansive scope of the ILPF Proposal, however, and its focus on limiting pay at CPP participants, is very different from the narrow focus of the Proposal on a retention ratio. Put another way, their "principal thrusts" differ.

Neither the CPP nor TARP is mentioned in the Proposal or its supporting statement. The Plan submitted proposals substantially identical to the Proposal at a raft of non-financial companies, including Danaher, Dow Chemical, Macy's, Moody's, and Occidental Petroleum. (The proposal was also submitted to financial companies American International Group and Intercontinental Exchange.) Judging from the text of the ILPF Proposal and its supporting statement, it seems unlikely that the proposal was submitted to any company that did not participate in the CPP.

Bank of America claims that the Proposal should be excluded as substantially duplicating the ILPF Proposal because inclusion of both proposals would be confusing to shareholders and approval of both would send conflicting signals to the company. That is not the case. Bank of America points to the fact that the ILPF Proposal calls for retention of shares through the termination of employment while the

¹ Exchange Act Release No. 12999, 1976 SEC LEXIS 326 (Nov. 22, 1976).

Securities and Exchange Commission

January 13, 2009

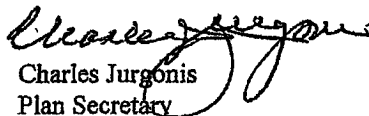
Page 3

Proposal urges that executives be required to hold shares until two years following employment termination. But shareholders could choose to vote for (a) the ILPF Proposal because they support the notion of a retention requirement and the other reforms urged in the ILPF Proposal and (b) the Proposal because they favor the longer two-years-post-employment holding period. And if both proposals are approved, Bank of America could reasonably conclude that shareholders viewed the longer holding period as preferable, since other aspects of the proposals are similar.

Similarly, Bank of America highlights the Proposal's calculation of a retention ratio based on "net after-tax shares," compared with the ILPF Proposal's reference simply to "shares." Again, approval of both proposals would communicate to the company that shareholders are comfortable with the arguably more lenient approach taken by the Proposal. The small differences between the two proposals with respect to the retention ratio, which Bank of America concedes "differ only slightly in implementation methodology," do not create such confusion that exclusion is warranted.

If you have any questions or need additional information, please do not hesitate to call me at (202) 429-1007. The Plan appreciates the opportunity to be of assistance to the Staff in this matter.

Very truly yours,


Charles Jurgonis
Plan Secretary

CJ: jkr

cc:

Andrew A. Gerber
Hunton & Williams
agerber@hunton.com



RECEIVED
2009 JAN 14 AM 11:25
DIVISION OF CHIEF COUNSEL
CORPORATION FINANCE

HUNTON & WILLIAMS LLP
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TEL 704 • 378 • 4700
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ANDREW A. GERBER
DIRECT DIAL: 704-378-4718
EMAIL: agerber@hurton.com

FILE NO: 46123.74

January 13, 2009

Rule 14a-8

BY OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Supplemental Letter for Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz
Supplemental Letter for Stockholder Proposal Submitted by Andrea Loyd Bell

Ladies and Gentlemen:

By letter dated December 23, 2008 (the "Initial Letter"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted the proposals submitted by (i) Donald M. and Judith A. Schwartz (the "Schwartz Proposal") and (ii) Andrea Loyd Bell (the "Bell Proposal") from its proxy materials for the 2009 Annual Meeting for the reasons set forth therein. The Schwartz Proposal (as revised) and the Bell Proposal are attached hereto as **Exhibit A**. On January 2, 2009, we supplemented our Initial Letter with respect to the Schwartz Proposal. A copy of the January 2, 2009 letter is attached hereto as **Exhibit B**, and includes as an exhibit thereto, a copy of the Initial Letter.

As counsel to the Corporation, we hereby supplement our prior letters and request confirmation that the Division will not recommend enforcement action if the Corporation omits the Schwartz Proposal and the Bell Proposal from its proxy materials for the 2009 Annual Meeting for the additional reason set forth herein. This letter is intended to supplement, but does not replace, our prior letters.



Securities and Exchange Commission

January 13, 2009

Page 2

GENERAL

As stated in the Initial Letter, the 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

A copy of this letter is also being sent to the proponents as notice of the Corporation's intention to omit the Proposals from the Corporation's proxy materials for the 2009 Annual Meeting.

To the extent required by Rule 14a-8, this letter shall also serve as our opinion of counsel with respect to federal and New York law. Members of this firm are licensed to practice in the State of New York and have provided this opinion.

SUMMARY OF PROPOSALS

The Schwartz Proposal

The Proposal recommends "that top tier management of Bank Of [sic] America Corporation voluntarily and temporarily reduce their compensation in all forms by 50% until such time as the stock regains a price of 50% of its all-time highs [sic], with full dividend restoration."

The Bell Proposal

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

ADDITIONAL REASON FOR EXCLUSION OF SCHWARTZ AND BELL PROPOSALS

- 1. The Corporation may omit both the Schwartz and Bell Proposals pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6) because the Proposals, if implemented, would cause the Corporation to violate federal and New York law, and, accordingly, the Corporation lacks the authority to implement the Proposals.**

Rule 14a-8(i)(2) permits a company to exclude a proposal if the proposal would cause the company to violate state law. Rule 14a-8(i)(6) permits a registrant to omit a proposal from its proxy materials



Securities and Exchange Commission

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if, upon passage, “the company would lack the power or authority to implement the proposal.” As part of the government’s Troubled Asset Relief Program Capital Purchase Program, the Corporation entered into a Letter Agreement with the United States Department of the Treasury (the “Treasury Department”) on October 26, 2008, which includes a Securities Purchase Agreement--Standard Terms (the “SPA”, and collectively, the “Letter Agreement”). The Letter Agreement is filed with the Commission as part of the Corporation’s Form 8-K filed October 30, 2008 and is attached hereto as **Exhibit C**. Section 5.5 of the SPA states the Letter Agreement “will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.”

Among other agreements, the SPA contains a restriction on the payment of increased dividends. Section 4.8 of the SPA states:

(a) Prior to the earlier of (x) the third anniversary of the Closing Date and (y) the date on which the Preferred Shares have been redeemed in whole or the Investor has transferred all of the Preferred Shares to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor:

(i) declare or pay any dividend or make any distribution on the Common Stock (**other than (A) regular quarterly cash dividends of not more than the amount of the last quarterly cash dividend per share declared** or, if lower, publicly announced an intention to declare, on the Common Stock prior to October 14, 2008, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction, (B) dividends payable solely in shares of Common Stock and (C) dividends or distributions of rights or Junior Stock in connection with a stockholders’ rights plan)

The Letter Agreement is governed by federal or, to the extent federal law is not applicable, New York law. To state a claim for breach of contract under either federal or New York law, the elements are very similar. Under federal law, a party must show: (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by the breach. *See, e.g., C.H. Guernsey & Co. v. U.S.*, 65 Fed. Cl. 582, 595 (Fed. Cl. 2005) (citing *San Carlos Irrigation and Drainage Dist v. U.S.*, 877 F.2d 957, 959 (Fed. Cir. 1989)). Under New York law, a party must show: (1) formation of a contract; (2) performance by the non-breaching party; (3) failure to perform by one party; and (4) resulting damage. *See, e.g., Hecht v. Components International, Inc.*, 867 N.Y.S.2d 889, 895 (N.Y. Sup. Ct. 2008). Both the



Securities and Exchange Commission

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Page 4

federal law and New York law are well settled in this area. The Letter Agreement is a valid and binding agreement, which imposes obligations upon the Corporation, and under which the Treasury Department has performed. If the Corporation were to unilaterally increase its dividend as proposed, that increase would violate Section 4.8 of the Letter Agreement to the detriment of the Treasury Department. Such a violation would result in the Corporation's breach of its contract with the Treasury Department, a violation of both federal and New York law.

On the date of the Letter Agreement, the Corporation's regular quarterly cash dividend was \$0.32 per share. Both the Schwartz Proposal and the Bell Proposal require the reinstatement of the previous regular quarterly cash dividend of \$0.64. By their terms, the limitations imposed by both the Schwartz and Bell Proposals are operative until the Corporation increases its regular quarterly cash dividends. However, as noted above, if the Corporation were to implement such a dividend increase, it would be in breach of contract under the Letter Agreement.

The Division has consistently permitted the exclusion of stockholder proposals pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6), and the predecessor to such rules, Rules 14a-8(c)(2) and 14a-8(c)(6), if the proposals would require the company to breach existing contractual obligations or otherwise violate the law. *See Bank of America Corporation* (February 26, 2008) (proposal that would require the company to unilaterally breach its contractual agreements was excludable under Rules 14a-8(i)(2) and (i)(6)); *Hudson United Bancorp* (March 2, 2005); *NetCurrents, Inc.* (June 1, 2001); *The Goldfield Corporation* (March 28, 2001); *CoBancorp Inc.* (February 22, 1996); and *Pico Products, Inc.* (September 23, 1992).

Both the Schwartz and Bell Proposals impose limitations on the Corporation that are operative until the Corporation acts in a manner that will cause it to violate federal and New York law (i.e., by increasing the dividend). Accordingly, it is our opinion that implementation of the requirement that the Corporation increase the dividend as a pre-condition of ending the limitations imposed by both the Schwartz and Bell Proposal would require the Corporation to breach unilaterally its contractual obligations, in violation of both federal and New York law, and the Proposal is, therefore, excludable under Rules 14a-8(i)(2) and 14a-8(i)(6).

2. The Corporation may omit both the Schwartz and Bell the Proposals pursuant to Rule 14a-8(i)(3) because they are vague and indefinite.

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or its supporting statement is contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits false and misleading statements in proxy soliciting materials, and Rule 14a-4, which requires information included in a proxy statement to be clearly presented. The Division has consistently taken the position that stockholder proposals that are vague and indefinite are inherently misleading and thus may be omitted from a company's proxy materials under Rule 14a-8(i)(3). Staff Legal Bulletin No. 14B (September 15, 2004) provides that a stockholder proposal may be omitted under Rule 14a-8(i)(3) where "the resolution contained in the proposal is so inherently vague or indefinite that



Securities and Exchange Commission

January 13, 2009

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neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” The Division has consistently deemed a proposal to be impermissibly vague or indefinite where the proposal calls for the company to adopt, consider or abide by a standard or set of standards established by a third party without describing the substantive provisions of the standards or guidelines.

The Schwartz and Bell Proposals are vague and indefinite because they do not include any disclosure regarding the fact that the Corporation cannot increase the dividend without violating federal and New York law (as discussed above). The failure to disclose the fact that the Corporation cannot legally satisfy the dividend increase condition set forth in the Proposals in order to remove the compensation limitations is likely to mislead the Corporation’s stockholders regarding this material fact. Stockholders may vote in favor of the Proposals erroneously believing that the Corporation will increase the dividend in order to avoid the compensation limitations in the Proposals. Stockholders are likely to assume that the Corporation need only increase the dividend (assuming the stock price condition has otherwise been met) to remove the compensation limitations. This would be a reasonable (although mistaken) assumption by stockholders since the Corporation is legally prohibited from increasing dividends. Because stockholders are likely to be misled by the disclosure, the Proposals violate Rule 14a-9 and, therefore, Rule 14a-8(i)(3) authorizes the Corporation to exclude them. The Division has previously found proposals excludable where they are vague and misleading See *SunTrust Banks, Inc.* (December 31, 2008) and *Wendy's International, Inc.* (February 24, 2006).

Accordingly, based on the forgoing, we believe that the Schwartz and Bell Proposals may be excluded because they are each vague and indefinite in violation of Rule 14a-8(i)(3).

**HUNTON &
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Securities and Exchange Commission
January 13, 2009
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If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact Andrew A. Gerber at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Donald M. and Judith A. Schwartz
Andrea Loyd Bell

EXHIBIT A

See attached.

Schwartz Proposal

REVISED QUESTION FOR PROXY BALLOT

WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and the common stock dividend has been reduced by 50%,

THEREFORE BE IT RESOLVED: That the shareholders of Bank of America Corporation recommend that top tier management of Bank Of America Corporation voluntarily and temporarily reduce their compensation in all forms by 50% until such time as the stock regains a price of 50% of its all-time highs, with full dividend restoration.

SUPPORTING STATEMENT

Top tier management of Bank of America Corporation must, in spite of the severe economic downturn, bear its share of the responsibility for the poor performance of the corporation. While many jobs in the corporation are being cut or eliminated and stockholders are suffering a massive percentage income loss, the owners of the corporation feel top management should "bite the bullet" as well.

Bell Proposal

2/3

05-Dec-2008 02:43 PM Bank of America 7043861670

BANK OF AMERICA SHAREHOLDER PROPOSAL

PROPOSAL: To approve a proposal to request that the Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

SUPPORTING STATEMENT: On October 6-7, 2008 company management took deliberate actions that resulted in a significant reduction in shareholder value. These actions included offering approximately 455 million shares of common stock priced at \$22 per share which was significantly below the market value and reducing the quarterly dividend to \$0.32 from \$0.64. While these actions may be in the long term best interest of the company, it would be inconsistent and inappropriate for named executives to profit while shareholders suffer. Therefore the purpose of this proposal is to align executive's interests with those of the shareholders by requiring that no named executive officer accrues or receives any value from any variable pay arrangement until such time as the lost shareholder value has been restored.

EXHIBIT B

See attached.



Securities and Exchange Commission
January 2, 2009
Page 2

the December 29, 2008 letter was submitted to the Division). Accordingly, the written statement required by Rule 14a-8(b) was timely provided to the Corporation. Based on the forgoing, as counsel to the Corporation, we hereby withdraw our Initial Letter dated December 29, 2008 requesting confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposal from its proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(b) and (f).

In response to the Corporation's earlier request that the Proponents reduce the number of proposals they submitted to one, the Proponent Letter included a revised proposal (the "Revised Proposal"). The Revised Proposal is attached hereto as Exhibit B.

THE REVISED PROPOSAL

The Proposal recommends "that top tier management of Bank Of [sic] America Corporation voluntarily and temporarily reduce their compensation in all forms by 50% until such time as the stock regains a price of 50% of its all-time highs [sic], with full dividend restoration."

REASONS FOR EXCLUSION OF THE REVISED PROPOSAL

For the same reasons set forth in our letter dated December 23, 2008, the Corporation believes that the Revised Proposal can be excluded under Rule 14a-8(i)(6), Rule 14a-8(i)(13) and Rule 14a-8(i)(11). As discussed below, the Revised Proposal is essentially same as the original Proposal. Accordingly, to avoid repeating the arguments set forth in the Initial Letter dated December 23, 2008 in full, we hereby incorporate by reference herein the arguments set forth in Part 4 of the Initial Letter dated December 23, 2008.

The original Proposal recommended "that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices." These actions are to remain in place "until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more."

Like the initial Proposal, the Revised Proposal clearly relates to executive compensation. The Revised Proposal merely collapses the three listed types of compensation (i.e., salaries, bonuses and stock options) into the phrase "compensation in all forms." Also, like the original Proposal, the Revised Proposal still requires the "voluntary" action of the Corporation's senior management. In addition, the Revised Proposal is tied to the Corporation's stock price and restoration of the full dividend.



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1. The Corporation may omit the Revised Proposal pursuant to Rule 14a-8(i)(6) because it lacks the power and authority to implement the Revised Proposal.

The Revised Proposal cannot be implemented without consent from third parties, and the Corporation cannot compel such third parties to comply with the terms of the Revised Proposal. Accordingly, the Corporation lacks the power to implement the Revised Proposal. The Revised Proposal recommends that "top tier management of Bank Of [sic] America Corporation *voluntarily* and temporarily reduce their compensation in all forms." (emphasis added). By its terms, the only way the Revised Proposal can be implemented is if the "top tier management" of the Corporation "voluntarily" agrees to comply with the terms of the Revised Proposal. While the Corporation may request or suggest that senior executives voluntarily agree to the terms of the Revised Proposal, the Corporation lacks the power to force compliance by such persons. Merely asking for the cooperation of senior executives is not sufficient to implement the Revised Proposal; third parties must agree to cooperate independently. Based on the foregoing, the Corporation lacks both legal and practical authority to implement the Revised Proposal, and, thus, the Revised Proposal may be excluded under Rule 14a-8(i)(6).

2. The Revised Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a stockholder proposal is excludable if it relates to specific amounts of cash or stock dividends. The Revised Proposal creates a direct link between all forms of compensation of top tier management of the Corporation until "full dividend restoration" has occurred. The Proponents do not expressly define "full dividend restoration"; however, the Revised Proposal's reference to the Corporation's 50% cut in dividends indicates that "full dividend restoration" refers to the dividend in effect immediately prior to the Corporation's October 2008 dividend cut, which was \$0.64 per share of common stock. This meaning is also clear from the language of the original Proposal and is the only reasonable interpretation of the Revised Proposal. The "quid pro quo" nature of the Revised Proposal, which makes top tier management compensation dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on stockholder proposals seeking specific dividends. The Division has consistently held stockholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). Unlike proposals seeking to establish general dividend policy, the Revised Proposal seeks a specific amount of dividends (i.e., \$0.64 per share) and uses executive compensation as leverage to get such dividends. As the Revised Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).



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3. The Revised Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

The Revised Proposal substantially duplicates the proposals (the "ILPF Proposals") submitted by the Indiana Laborers Pension Fund ("ILPF"). In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth in our Initial Letter dated December 23, 2008, the Corporation intends to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Revised Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Revised Proposal similarly requests that "top tier management of Bank Of [sic] America Corporation voluntarily and temporarily reduce their compensation in all forms by 50%." Although the Revised Proposal and the ILPF Proposals vary in specific terms and scope of implementation, it is clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Revised Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and recommend a general and permanent policy change to limit compensation and also include an additional proposal unrelated to limitations on executive compensation. The Revised Proposal seeks to impose temporary limitations on executive compensation that would end once the proposed dividend and stock price targets were satisfied. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer. Further, the Board of Directors would not be able to fully implement each proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Revised Proposal are substantially the same.

If the Corporation is required to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Revised Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

The Revised Proposal substantially duplicates the proposal (the "Bell Proposal") submitted by Andrea Loyd Bell ("Bell"). In the event that the Division does not concur with the Corporation's view that the Bell Proposal may be excluded for the reasons set forth in our Initial Letter dated



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Page 5

December 23, 2008, the Corporation intends to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting. The Bell Proposal and the Revised Proposal clearly address the same issue—limiting executive compensation and dividend restoration—and are very similar in their approach.

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

Although there are slight variances in the specific terms and scope of implementation between the two proposals, it is clear that the proposals share the same “principal thrust” or “principal focus,” and are substantially duplicative, notwithstanding that their terms differ slightly.

In addition, the Corporation believes the inclusion of the Bell Proposal and the Revised Proposal in the Corporation’s proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer. Further, the Board of Directors would not be able to fully implement each proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the Bell Proposal and Revised Proposal are substantially the same.

If the Corporation is required to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting, the Revised Proposal may be excluded from the Corporation’s proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the Bell Proposal that was previously submitted to the Corporation.



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If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew A. Gerber".

Andrew A. Gerber

cc: Teresa M. Brenner
Donald M. and Judith A. Schwartz

**HUNTON &
WILLIAMS**

EXHIBIT A

See attached.



HUNTON & WILLIAMS LLP
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ANDREW A. GERBER
DIRECT DIAL: 704-378-4718
EMAIL: agerber@hunton.com

FILE NO: 46123.74

December 29, 2008

Rule 14a-8

BY ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Supplemental Letter for Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

By letter dated December 23, 2008 (the "Initial Letter"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted a proposal (the "Proposal") received from Donald M. and Judith A. Schwartz (the "Proponents") from its proxy materials for the 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") for the reasons set forth therein. The Initial Letter is attached hereto as Exhibit A.

As counsel to the Corporation, we hereby supplement the Initial Letter and request confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposal from its proxy materials for the 2009 Annual Meeting for the additional reason set forth herein. This letter is intended to supplement, but does not replace, the Initial Letter.

GENERAL

A copy of the Proposal is attached hereto as Exhibit B. As stated in the Initial Letter, the 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the

ATLANTA AUSTIN BANGKOK BEIJING BRUSSELS CHARLOTTE DALLAS HOUSTON LONDON
LOS ANGELES McLEAN MIAMI NEW YORK NORFOLK RALEIGH RICHMOND SAN FRANCISCO SINGAPORE WASHINGTON
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December 29, 2008
Page 2

"Exchange Act"), enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that it may exclude the Proposal; and
2. Six copies of the Proposal.

A copy of this letter is also being sent to the Proponents as notice of the Corporation's intention to omit the Proposal from the Corporation's proxy materials for the 2009 Annual Meeting.

SUMMARY OF PROPOSAL

The Proposal recommends "that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices." These actions are to remain in place "until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more."

ADDITIONAL REASON FOR EXCLUSION OF PROPOSAL

The Corporation believes that the Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(b)(2) and Rule 14a-8(f) because the Proponents have not provided a written statement indicating that they intend to hold their stock in the Corporation through the date of the 2009 Annual Meeting. Rule 14a-8(b)(2) provides that in order for the Proponents to be eligible to submit a shareholder proposal at the 2009 Annual Meeting, the Proponents must provide a written statement that they will continue to hold their securities through the date of the 2009 Annual Meeting. As described below, the Proponents did not provide the required written statement and, therefore, the Proposal may be omitted from the Corporation's proxy materials for the 2009 Annual Meeting.

As noted above, the Proposal was received by the Corporation on November 29, 2008. The Proponents failed to state in either the Proposal or accompanying cover letter that they intend to hold their securities through the date of the 2009 Annual Meeting. The Corporation informed the Proponents, by letter dated December 10, 2008 (the "Defect Letter"), of this defect in their submission. The Defect Letter specifically requested that the Proponents provide a written statement that they intend to hold their securities through the date of the 2009 Annual Meeting. A copy of the Defect Letter is attached hereto as Exhibit C. The Defect Letter was sent to the Proponents by Federal Express on December 10, 2008 (a date within 14 days of the Corporation's receipt of the Proposal). The Defect Letter clearly notified the Proponents that they had 14-calendar days from their receipt of the Defect Letter to provide the requested written statement. In addition,

HUNTON & WILLIAMS

Securities and Exchange Commission
December 29, 2008
Page 3

the Corporation provided a copy of Rule 14a-8 with the Defect Letter. According to Federal Express tracking records, a copy of which is attached hereto as Exhibit D, the Defect Letter was received on December 12, 2008. As of the date of this letter, the Proponents have not responded to the Defect Letter and, specifically, have not provided the required written statement that they intend to hold their securities through the date of the 2009 Annual Meeting.

The Division has consistently concluded that a shareholder proposal may be properly omitted from a company's proxy materials pursuant to Rule 14a-8(b) and Rule 14a-8(f) where the proponent failed provide the required written statement. See *Bank of America Corporation* (December 28, 2007); *Harleysville Savings Financial Corporation* (October 23, 2007); and *Viad Corp.* (March 19, 2007). Accordingly, the Proposal may be omitted from the proxy materials for the Corporation's 2009 Annual Meeting pursuant to Rule 14a-8(b) and Rule 14a-8(f).

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Donald M. and Judith A. Schwartz

**HUNTON &
WILLIAMS**

EXHIBIT A

See attached.

**HUNTON &
WILLIAMS**

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EMAIL: agerber@hwn.com

FILE NO: 46123.74

Rule 14a-8

December 23, 2008

BY OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Stockholder Proposal Submitted by the Indiana Laborers Pension Fund
Stockholder Proposal Submitted by the American Federation of State, County &
Municipal Employees
Stockholder Proposal Submitted by Andrea Loyd Bell
Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

Pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), we request confirmation that the Staff of the Division of Corporation Finance (the "Division") will not recommend enforcement action if the Corporation omits from its proxy materials for the Corporation's 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") the proposal described below for the reasons set forth herein. The statements of fact included herein represent our understanding of such facts.

GENERAL

The Corporation received: (i) several proposals and a supporting statement dated November 13, 2008 (the "ILPF Proposals") from the Indiana Laborers Pension Fund (the "ILPF"), (ii) a proposal and supporting statement dated November 17, 2008 (the "AFSCME Proposals") from the American Federation of State, County & Municipal Employees ("AFSCME"), (iii) a revised proposal and supporting statement dated December 2, 2008 (the "Bell Proposal") from Andrea Loyd Bell ("Bell") and (iv) a proposal and supporting statement dated November 24, 2008 (the "Schwartz Proposal") from Donald M. and Judith A. Schwartz ("Schwartz" and ILPF, AFSCME, Bell and Schwartz each a "Proponent") for inclusion in the proxy materials for the 2009 Annual

ATLANTA AUSTIN BANGKOK BEIJING BRUSSELS CHARLOTTE DALLAS HOUSTON LONDON
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Meeting. The ILPF Proposals, the AFSCME Proposal, the Bell Proposal and the Schwartz Proposal (collectively, the "Proposals") are attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D, respectively. The 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(i) promulgated under the Exchange Act, enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that it may exclude the Proposals; and
2. Six copies of the Proposals.

With respect to Section 3.B. below, this letter shall also serve as my opinion of counsel. I am licensed to practice law in the States of North Carolina and Maryland.

A copy of this letter is also being sent to each Proponent as notice of the Corporation's intent to omit the Proposals from the Corporation's proxy materials for the 2009 Annual Meeting.

SUMMARY OF THE PROPOSALS

The ILPF Proposals

The ILPF Proposals urge the Board of Directors and its compensation committee to implement the following "set of executive compensation reforms" that impose important limitations on senior executive compensation" (emphasis added):

- limits on target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- a freeze on new stock option awards, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- adoption of an equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;

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- prohibition of accelerated vesting for all unvested equity awards;
- limits on all severance payments to an amount no greater than one times annual salary; and
- a freeze on the accrual of retirement benefits under any supplemental executive retirement plan.

The ILPF Proposals were received by the Corporation via certified mail on the morning of November 17, 2008.

The AFSCME Proposal

The AFSCME Proposal urges the Compensation and Benefits Committee of the Board of Directors (the "Committee") "to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCME Proposal further recommends that the Committee "not adopt a percentage lower than 75% of net after-tax shares." The AFSCME Proposal was received by the Corporation by facsimile on November 17, 2008 at 5:54 p.m. Eastern Standard Time.

The Bell Proposal

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

The Bell Proposal was originally received by the Corporation on November 18, 2008 and was subsequently revised on December 2, 2008.

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The Schwartz Proposal

The Schwartz Proposal recommends "that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices." These actions are to remain in place "until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more." The Schwartz Proposal was received by the Corporation on November 28, 2008.

REASONS FOR EXCLUSION OF PROPOSALS

1. **The ILPF Proposals**—The Corporation believes that the ILPF Proposals may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(c) because the ILPF has violated the one proposal limitation.
2. **The AFSCME Proposal**—In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the AFSCME Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the AFSCME Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.
3. **The Bell Proposal**—The Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to (i) Rule 14a-8(b) and (f) because Bell has failed, upon timely request, to provide the required ownership information to establish eligibility to submit a proposal under Rule 14a-8 and (ii) Rule 14a-8(i)(13) because the Bell Proposal relates to a specific amount of dividends. In addition, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal. In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Bell Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.
4. **The Schwartz Proposal**—The Corporation believes that the Schwartz Proposal may be excluded pursuant to (i) Rule 14a-8(i)(6) because the Corporation lacks the power and authority

to implement the Schwartz Proposal and (ii) Rule 14a-8(i)(13) because the Schwartz Proposal relates to a specific amount of dividends. In addition, in the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting. Finally, in the event that the Bell Proposal is not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(1) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the Bell Proposal) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.

1. Exclusion of the ILPF Proposals.

The ILPF Proposal consists of seven different proposals. Rule 14a-8(c) provides that each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. The Rule further provides that a stockholder may comply with the rule by reducing the number of proposals to one within 14 days from notification of the defect by the company. Notwithstanding the fact that the ILPF has framed its request in terms of one shareholder resolution, the ILPF Proposals submitted by the ILPF violate Rule 14a-8(c) because they consist of more than one proposal and, in fact, constitute as many as seven separate proposals. The ILPF Proposals were received by the Corporation on November 17, 2008. By letter dated November 19, 2008, the Corporation notified the ILPF that its submission violated Rule 14a-8(c) and requested that a revised proposal be submitted to the Corporation within 14 days of the ILPF's receipt of the letter. A copy of the November 19, 2008 letter is attached hereto as Exhibit E, and the evidence of the ILPF's receipt of such letter on November 25, 2008 is attached as Exhibit F. As of the date of this letter, the ILPF has failed to respond to the request.

The ILPF has acknowledged that the ILPF Proposals represent more than one request by requesting that the Corporation include the "set" of "reforms" and by setting forth the ILPF Proposals in seven separate bullet points. The Division has consistently taken the position that substantially distinct proposals may not be considered a single proposal for purposes of Rule 14a-8(c). See *Fotoball, Inc.* (May 6, 1997) (proposals relating to a minimum share ownership of directors, form of director compensation and business relationships between an issuer and its non-employee directors constitute multiple proposals) and *American Electric Power Company, Inc.* (January 2, 2001) (proposals relating to tenure, meetings and compensation of the board constitute multiple proposals). In certain circumstances, the Division has taken the position that multiple proposals will be deemed to constitute one proposal if they are related to a single, well-defined unifying concept. See *Securities Exchange Act Release No. 12999* (November 22,



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1976). Unlike the proposals set forth in *Computer Horizons Corp.* (April 1, 1993) (proposals unified by the concept of the elimination of takeover defenses), the ILPF Proposals represent more than a single, well defined unifying concept. As a result, the Corporation believes that it may exclude the ILPF Proposals in accordance with Rule 14a-8(f)(1) because of the ILPF's failure to comply with Rule 14a-8(c).

Although the ILPF Proposals are packaged as a "set of executive compensation reforms," they address multiple concepts that are not well defined, including both compensation matters and corporate governance matters. The ILPF Proposals seek to (1) limit target annual incentive compensation, (2) require that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, (3) freeze new stock option awards, (4) impose a 75% "hold-to-retirement" policy on shares of stock obtained through equity awards, (5) prohibit accelerated vesting for all unvested equity awards, (6) limit severance payments and (7) freeze accrual of retirement benefits under supplemental executive retirement plans. The Division has found that even "where the components [of a multi-part proposal] relate to some central topic, however, proposals that contemplate a variety of loosely related actions can be excluded for violating Rule 14a-8(c)." *General Motors Corporation* (April 9, 2007). *See also, Torotel, Inc.* (November 1, 2006) and *Compuware Corporation* (July 3, 2003). The component parts of the ILPF Proposals relate to a broad range of matters including compensation, bonuses, stock option grants, acceleration of equity awards, severance payments and retirement benefits. Permitting a proponent to submit any number of broad ranging proposals under the umbrella of executive compensation is contrary to Rule 14a-8 and the proxy rules generally.

Under the proxy rules, if the Corporation were presenting these seven proposals as a single proposal, the rules regarding the appropriateness of handling voting items would be called into question. Rule 14a-5 requires that information included in a proxy statement must be "clearly presented" and the statements made shall be divided into groups according to subject matter. These seven proposals are each distinct in their application and require separate consideration by stockholders. In addition, implementation of these seven proposals will require separate and distinct actions by the Corporation.

Even if the Division cannot concur that the ILPF Proposal consists of seven different proposals, the ILPF Proposal clearly consists of more than one proposal. In the event that the Division does not concur that there are seven proposals identified above, the Corporation believes there is clearly more than one, and, accordingly, all the proposals would be excludable. *See Occidental Petroleum Corporation* (February 23, 1998) (the Division noting that "while it does not necessarily agree with the Company's assertion that the proposal contains five separate proposals, we believe that that the proposal does contain more than one proposal"). Even if the Division were to characterize the first six items listed above as relating to a single concept (i.e.,

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executive compensation/pay for performance), the seventh item, relating to a freeze on the accrual of retirement benefits under any supplemental executive retirement plan, simply cannot appropriately be characterized as executive compensation. In fact the, the AFSCME Proposal is substantially the same as the seventh proposal. The AFSCME Proposal is appropriately presented as a stand-alone proposal. As noted above, the supporting statement of the ILPF Proposals focuses primarily on compensation levels, citing to "[g]enerous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership." In addition, the ILPF Proposals cite to "serious financial losses" by shareholders as well as the Corporation's recent "financial and stock price performance" as a need for the reforms. Finally, the ILPF Proposals call "for a set of more rigorous executive compensation reforms that . . . will significantly improve the pay-for-performance features of the Company's plan."

The hold-to-retirement aspect of the proposal presents an entirely different concept and is not driven by compensation levels or pay-for-performance. As noted in the AFSCME Proposal below, the hold-to-retirement proposal serves a different purpose than compensation levels. "Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders." *AFSCME Proposal*. In addition, the hold-to retirement proposal is designed to "discourage excessive risk-taking and promote long-term, sustainable value creation." *Id.* Citing a commission of The Conference Board that supported the holding requirement, the AFSCME Proposal states that "the long-term focus promoted thereby 'may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions.'"

While the ILPF may argue that the Division's response in *AT&T Wireless Services, Inc.* (February 11, 2004) ("*AT&T*") is applicable because the Division found that a proposal requesting a wide-ranging "Commonsense Executive Compensation" program did not constitute more than one proposal, the ILPF Proposals are distinguishable. In *AT&T*, a proposal had five parts dealing with executive compensation and the supporting statement focused on excessive compensation levels. However, unlike the hold-to-retirement requirement of the ILPF Proposals, *AT&T* did not include an unrelated requirement. Accordingly, while the *AT&T* proposal arguably met the single concept test, the ILPF Proposals clearly do not.

Conclusion. Based on the foregoing, the ILPF Proposals may be omitted from the proxy materials pursuant to Rules 14a-8(c) and 14a-8(f) of the Exchange Act.



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2. Exclusion of the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the AFSCME Proposal may be excluded for the reasons set forth below. Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division has consistently concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. *See, e.g., Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principal thrust of the relevant part of the ILPF Proposals is identical to the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The relevant portion of the ILPF Proposals and the AFSCME Proposal clearly address the same issue—adoption of a 75% hold-to-retirement policy. Although the ILPF Proposals include additional proposals, and in effect entirely subsume the AFSCME Proposal, the relevant portions of the two proposals differ only slightly in implementation methodology. The ILPF Proposals urge the adoption of a "strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards." The AFSCME Proposal urges the adoption of a "policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCME Proposal further recommends that the Compensation and Benefits Committee of the Corporation's Board "not adopt a percentage lower than 75% of net after-tax shares." Although there are slight variances on the specific terms of implementation, such as the references to a two-year period and "net after-tax shares" in the AFSCME Proposal, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding their slightly different terminology.



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In *Honeywell International, Inc.* (February 15, 2008) ("*Honeywell International*"), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requested that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." The Division found that the second proposal could be excluded in *Honeywell International* because it was substantially duplicative of the first proposal. As is the case with the AFSCMB Proposal, which is subsumed by the ILPF Proposals, the first proposal in the *Honeywell International* letter subsumed the second proposal. *See also, Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth Corporation* (January 14, 1999) ("*BellSouth*"), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. *See also, Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the AFSCMB Proposal differ in terms of implementation methodology, they clearly address the same core issue—adoption of a 75% hold-to-retirement policy.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the AFSCMB Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative

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and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. For instance, the ILPF Proposals request a different holding period upon retirement than the AFSCME Proposal. In addition, the ILPF Proposals apply to all shares obtained through equity awards, while the AFSCME Proposal applies only to net after-tax shares. The ILPF Proposals further include six other proposals that would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of relevant part of the ILPF Proposals and AFSCME Proposal are substantially the same.

If the Corporation is required to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the AFSCME Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

3. Exclusion of the Bell Proposal.

- A. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(b) and 14a-8(f) because the Proponent failed to provide the requested documentary support of the Proponent's stock ownership.

The Corporation believes that the Bell Proposal may be properly omitted from its proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(b) and 14a-8(f). Pursuant to Rule 14a-8(b), a proponent must have continuously held at least \$2,000 in market value of voting securities for at least one year prior to submitting the proposal and must continue to hold those securities through the date of the meeting. Pursuant to Rule 14a-8(f), a registrant must request documentary support of the proponent's ownership within 14 calendar days of its receipt of the proposal, and the proponent must furnish such support within 14 calendar days of his or her receipt of the registrant's request.

On November 18, 2008, the Corporation received the Bell Proposal. The Corporation's stockholder records did not reflect that the Proponent was a record holder. Accordingly, by letter dated November 19, 2008, a copy of which is attached as Exhibit G, the Corporation requested, among other things, documentary support of Bell's ownership in the Corporation. The letter was sent certified mail, return receipt requested. Based on the return receipt received by the Corporation, a copy of which is attached as Exhibit H, Bell received the letter on November 26, 2008. The November 19, 2008 letter specifically referenced the 14-day deadline and provided

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the relevant portions of Rule 14a-8. In addition, the letter stated that Bell needed to provide documentary support that verified that "at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year." (emphasis added)

In response to the Corporation's request for documentary support of Bell's ownership, the Corporation received a letter dated December 1, 2008 from UBS Financial Services, Inc., Bell's broker (the "UBS Letter"). The UBS Letter is attached hereto as ~~Exhibit I~~. The UBS Letter states, "Mrs. Andrea Loyd Bell is the trustee for the Harold Loyd Bypass Trust dated 11/01/99 that is held at UBS. The trust holds 7,132 Banc of America shares. The Trust has owned all of the BAC shares longer than one year."

To date, no other documentary support has been provided by Bell or UBS Financial Services, Inc.

The Corporation does not believe that the UBS Letter satisfies the documentary requirements. Under the most favorable reading of the UBS Letter, and having no reason to doubt the veracity of the UBS Letter, the Corporation can only be certain that Bell held the required amount of common stock continuously for "longer than one year" from December 1, 2008 (the date of the UBS Letter). However, there is no evidence meeting the requirements of Rule 14a-8 that verifies Bell's required ownership for one year prior to November 18, 2008 (the date the Bell Proposal was submitted). Based on the UBS Letter, there is no way to rule out the possibility that Bell acquired the her shares of common stock between November 19 and November 29, 2007, which would have made her ineligible to have submitted a proposal on November 18, 2008.

Consequently, Bell has not timely provided the required evidence to document her ownership of at least \$2,000 in market value of the Corporation's common stock continuously for at least one year prior to submitting the Bell Proposal.

The Division has consistently interpreted the procedural requirements under Rule 14a-8 strictly in finding proposals excludable. See *OCA, Inc.* (February 24, 2005) (proposal excludable where proponent submitted a statement of ownership stating he had held shares "continuously since January 8, 2004," rather than showing ownership from January 4, 2005 [sic], the date the proponent submitted his proposal); *Unocal Corporation* (February 25, 2004) (proposal excludable where proponent submitted a statement of ownership stating she held shares continuously from December 27, 2002 and not from December 9, 2003, the date of the proposal's submission); *AutoNation, Inc.* (March 14, 2002) (proposal excludable where proponent with proposal dated December 10, 2001 submitted a statement of ownership stating "he has continuously held those shares since December 12, 2000," rather than showing



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ownership from December 10, 2000); *Time Warner Inc.* (January 21, 2005) (proponent's compliance was one day late and therefore the proposal was excludable); and *Nabors Industries Ltd.* (March 8, 2005) (proponent's compliance was eight days late and therefore the proposal was excludable).

Since the Proponent failed to provide the requested documentary support of her stock ownership within the required 14-day period, she has failed to comply with the requirements of Rules 14a-8(b) and (f). Accordingly, the Proposal may properly be omitted from the Corporation's proxy materials.

- B. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal.**

Rule 14a-8(i)(2) permits a company to exclude a proposal if the proposal would cause the company to violate state law. Rule 14a-8(i)(6) permits a registrant to omit a proposal from its proxy materials if, upon passage, "the company would lack the power or authority to implement the proposal." The Bell Proposal requests that the "Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer." (emphasis added) By the terms of the Bell Proposal, long and short term compensation plans are "broadly defined" to include all plans and agreements. In addition, the Bell Proposal would prohibit the Corporation from fulfilling its legally binding obligations with respect to the payment of plan benefits for prior periods. By its terms, implementation of the Bell Proposal would violate the terms of previously granted awards under any benefit plan.

As a specific example, restricted stock units and stock options, among other forms of compensation have been issued to senior executives under the Corporation's 2003 Key Associate Stock Plan. These awards are issued pursuant to a Restricted Stock Units Award Agreement and an Stock Option Award Agreement, respectively. Each of these agreements are governed by Delaware law. With respect to currently outstanding awards under the 2003 Key Associate Stock Plan, the Corporation cannot unilaterally terminate its obligations under the awards.

The Proposal would require the Corporation to unilaterally terminate its legal obligations under outstanding Restricted Stock Units Award Agreements and an Stock Option Award Agreements, in breach of its contractual obligations to make payment on outstanding awards, all in violation of Delaware law. The Division has consistently permitted the exclusion of stockholder proposals



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pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6), and the predecessor to such rules, Rules 14a-8(c)(2) and 14a-8(c)(6), if the proposals would require the company to breach existing contractual obligations. See *NetCurrents, Inc.* (June 1, 2001); *The Goldfield Corporation* (March 28, 2001); *CoBancorp Inc.* (February 22, 1996); and *Pico Products, Inc.* (September 23, 1992).

Accordingly, it is my opinion that the implementation of the Proposal would require the Corporation to unilaterally terminate its obligations under the Restricted Stock Units Award Agreements and Stock Option Award Agreements, which would result in a breach of the Corporation's contractual obligations, in violation of Delaware law. Accordingly, the Bell Proposal is excludable under Rules 14a-8(i)(2) and 14a-8(i)(6).

C. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for a specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Bell Proposal seeks to create a direct link between long and short term incentive compensation of the named executive officers and the payment of a specific minimum dividend amount (i.e., \$0.64 per share per quarter for four consecutive quarters). The "quid pro quo" nature of the Bell Proposal, which makes long and short term incentive compensation of named executive officers dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of

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remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to "a specific amount of cash dividends"; *Debmurva Power & Light Company* (February 12, 1996) (proposal calling for "no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year" and "[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share" was found excludable under Rule 14a-8(c)(13) as it "relates to a specific amount of cash dividends"); and *Debmurva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating "to specific amounts of cash dividends"). Unlike proposals seeking to establish general dividend policy, the Bell Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Bell Proposal seeks the payment of a specific dividend, namely \$0.64. As the Bell Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

- D. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Bell Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Bell Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Bell Proposal similarly urges the amendment of long and short term incentive plans of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until certain targets have been met. Although there are variances in the specific terms and scope of implementation, the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards."



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The Division concurred that the four Centecor proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Bell Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Bell Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Bell Proposal would impose temporary limitations on executive compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Bell Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Bell Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(I)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

4. Exclusion of the Schwartz Proposal.

- A. The Corporation may omit the Schwartz Proposal pursuant to Rule 14a-8(I)(6) because it lacks the power and authority to implement the Schwartz Proposal.

Rule 14a-8(I)(6) provides that a company may omit a proposal "if the company would lack the power or authority to implement the proposal." The Schwartz Proposal cannot be implemented without consent from third parties, and the Corporation cannot compel such third parties to

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comply with the terms of the Schwartz Proposal. Accordingly, the Corporation lacks the power to implement the Schwartz Proposal.

The Schwartz Proposal recommends that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices." (emphasis added) By its terms, the only way the Schwartz Proposal can be implemented is if the "top tier management" of the Corporation "voluntarily" agrees to comply with the terms of the Schwartz Proposal. While the Corporation does have the power to request or suggest that senior executives voluntarily agree to the terms of the Schwartz Proposal, the Corporation has no power to force compliance by such persons. Merely asking for the cooperation of senior executives is not sufficient to implement the Schwartz Proposal; third parties must agree to cooperate independently.

The Commission has acknowledged that exclusion under Rule 14a-8(i)(6) may be justified where implementing the proposal would require intervening actions by independent third parties. See *Securities Exchange Act Release No. 34-40018* (May 21, 1998). The Division has consistently permitted the exclusion of stockholder proposals pursuant to Rule 14a-8(i)(6) where the proposal requires third party action or consent for their implementation. See *Catellus Development Corporation* (March 3, 2005) (proposal that company take certain actions related to property it no longer owned); *SCEcorp* (December 20, 1995) (proposal that unaffiliated fiduciary trustees amend voting agreements); *American Home Products Corp.* (February 3, 1997) (proposal requested the company provide certain warnings on its contraceptive products that were subject to government oversight and regulatory approval); and *American Electric Power Company, Inc.* (February 5, 1985) (proposal requested the completion of a nuclear plant that was jointly owned by two unaffiliated parties).

Based on the foregoing, the Corporation lacks both legal and practical authority to implement the Proposal, and, thus, the Proposal may be excluded under Rule 14a-8(i)(6).

B. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Schwartz Proposal seeks to create a direct link between salary levels, bonuses and stock option grants of top tier management of the Corporation until "the original full dividend is restored." While the Proponent does not expressly define this term, the Proponent's reference to



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the Corporation's 50% cut in dividends in October 2008 indicates that the "original full dividend" refers to the dividend in effect immediately prior to the October 2008 dividend cut, which was \$0.64 per share of common stock. The "quid pro quo" nature of the Schwartz Proposal, which makes top tier management compensation dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to "a specific amount of cash dividends"); *Delmarva Power & Light Company* (February 12, 1996) (proposal calling for "no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year" and "[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share" was found excludable under Rule 14a-8(c)(13) as it "relates to a specific amount of cash dividends"); and *Delmarva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating "to specific amounts of cash dividends"). Unlike proposals seeking to establish general dividend policy, the Schwartz Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Schwartz Proposal seeks payment of a specific dividend, namely \$0.64. As the Schwartz Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

- C. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

The Schwartz Proposal Substantially Duplicates the ILPF Proposals. In the event that the Division does not concur with the Corporation's view that neither the ILPF Proposals nor the Bell Proposal may be excluded for the reasons set forth above, the Corporation believes that the Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Schwartz Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Schwartz Proposal similarly requests that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices" until certain targets have been met. Although there are variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for

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annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation, and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, will result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Schwartz Proposal would impose temporary limitations on executive

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compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Schwartz Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

The Schwartz Proposal Substantially Duplicates the Bell Proposal. Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the Bell Proposal is identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the Bell Proposal may be excluded for the reasons set forth above, the Corporation intends to include the Bell Proposal previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The Bell Proposal and the Schwartz Proposal clearly address the same issue—limiting executive compensation. In fact, the Bell Proposal and the Schwartz Proposal are very similar in their approach.

As noted above, the Schwartz Proposal recommends that

top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.)

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accept no stock options at prices less than 50% of the past all-time high stock prices . . . until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

Although there are slight variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock



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option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the Bell Proposal and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the Bell Proposal and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the Bell Proposal and Schwartz Proposal are substantially the same.

If the Corporation is required to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the Bell Proposal that was previously submitted to the Corporation.

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposals may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

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If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Indiana Laborers Pension Fund
American Federation of State, County & Municipal Employees
Andrea Loyd Bell
Donald M. and Judith A. Schwartz

Exhibit A

INDIANA LABORERS PENSION FUND

P.O. Box 1567 • Terre Haute, Indiana 47808-1567
Telephone 812-258-2551 • Toll Free 800-962-5156 • Fax 812-258-2553

Sent Via Fax (704) 386-6699

November 13, 2008

NOV 17 2008

Mr. Alice Hersh
Deputy General Counsel and Corporate Secretary
Bank of America Corporation
100 North Tryon Street
Bank of America Corporate Center
Charlotte, NC 28253

Dear Mr. Hersh,

On behalf of the Indiana Laborers Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Bank of America Corporation ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Fund is the beneficial owner of approximately 38,675 shares of the Company's common stock, which have been held continuously for more than a year prior to this date of submission. The Proposal is submitted in order to promote a governance system at the Company that enables the Board and senior management to manage the Company for the long-term, maximizing the Company's wealth generating capacity over the long-term will best serve the interests of the Company shareholders and other important constituents of the Company.

The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Jennifer O'Dell, Assistant Director of the LUNA Department of Corporate Affairs at (202) 942-2359. Copies of correspondence or a request for a "no-action" letter should be forwarded to Ms. O'Dell at the following address: Laborers' International Union of North America, 905 16th Street, NW, Washington, DC 20006.

Sincerely,



Michael J. Short
Secretary-Treasurer

cc: Jennifer O'Dell
Enclosure

OFFICERS - BOARD OF TRUSTEES

ERIC G. COOK
CHAIRMAN

MICHAEL J. SHORT
SECRETARY-TREASURER

JANETTA E. ENGLAND
ALTERNATE SECRETARY

Resolved: Given that Bank of America Corporation ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

Supporting Statement: Many Company shareholders are experiencing serious financial losses related to the problems afflicting our nation's credit markets and economy. The Company's financial and stock price performance has been challenged by these credit market events and their impact on the nation's economy. The Company's participation in the Stabilization Act's TARP is the result of these broad capital market problems and decisions made by Company senior executives.

Generous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership. Establishing renewed investor confidence in the markets and corporate leadership is a critical challenge. Congress enacted executive compensation requirements for those companies participating in the Stabilization Act's TARP. Unfortunately, we believe those executive compensation restrictions fail to adequately address the serious shortcomings of many executive compensation plans. This proposal calls for a set of more rigorous executive compensation

reforms that we believe will significantly improve the pay-for-performance features of the Company's plan and help restore investor confidence. Should existing employment agreements with Company senior executives limit the Board's ability to implement any of these reforms, the Board and its compensation committee is urged to implement the proposed reforms to the greatest extent possible. At this critically important time for the Company and our nation's economy, the benefits afforded the Company from participation in the TARP justify these more demanding executive compensation reforms.



EMPLOYEES PENSION PLAN

Commission
Gerald W. McEntee
William Lutz
Edward J. Miller
Kathy J. Williams
Henry C. Schiff

November 17, 2008

VIA Overnight Mail and Telecopier (704) 386-5083
 Bank of America Corporation
 101 South Tryon Street, NC1-002-29-01
 Charlotte, North Carolina 28255
 Attention: Alice Herald, Deputy General Counsel and Corporate Secretary

Dear Ms. Herald:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2008 proxy statement of Bank of America (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2009 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 78,372 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Charles Jurgonis at (202) 429-1007.

Sincerely,


 GERALD W. McENTEE
 Chairman

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-6142 FAX (202) 763-4404 1625 L Street, N.W., Washington, D.C. 20036-5827

RESOLVED, that stockholders of Bank of America Corporation ("Bank of America") urge the Compensation and Benefits Committee of the Board of Directors (the "Committee") to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise), and to report to stockholders regarding the policy before Bank of America 2010 annual meeting of stockholders. The stockholders recommend that the Committee not adopt a percentage lower than 75% of net after-tax shares. The policy should address the permissibility of transactions such as hedging transactions which are not sales but reduce the risk of loss to the executive.

SUPPORTING STATEMENT

Equity-based compensation is an important component of senior executive compensation at Bank of America. According to Bank of America 2008 proxy statement, most of the total annual compensation opportunity for executive officers is provided in stock.

We believe there is a link between shareholder wealth and executive wealth that correlates to direct stock ownership by executives. According to an analysis conducted by Watson Wyatt Worldwide, companies whose CFOs held more shares generally showed higher stock returns and better operating performance. (Alix Stuart, "Skin in the Game," *CFO Magazine* (March 1, 2008))

Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders. In the context of the current financial crisis, we believe it is imperative that companies reshape their compensation policies and practices to discourage excessive risk-taking and promote long-term, sustainable value creation. A 2002 report by a commission of The Conference Board endorsed the idea of a holding requirement, stating that the long-term focus promoted thereby "may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions."

Bank of America has a minimum stock ownership guideline requiring directors and executives to own a certain number of shares of Bank of America stock. The directors and executives covered by the policy have five years in which to comply. We believe this policy does not go far enough to ensure that equity compensation builds executive ownership. We also view a retention requirement approach as superior to a stock ownership guideline because a guideline loses effectiveness once it has been satisfied.

We urge stockholders to vote for this proposal.

December 2, 2008

Kristin Marie Oberhaus
Bank of America Corporation
NCF-002-29-01
101 South Tryon Street
Charlotte, NC 28235

Dear Ms. Oberhaus:

Thank you for your response to my shareholder proposal. The information you provided was very helpful. I received your letter on November 26, 2008.

Attached please find my revised proposal which is in response to your position that my original submission actually contained multiple proposals. I would like this revised proposal to be included in the proxy statement for the 2009 Annual Meeting of Stockholders.

With regard to the "record" holder issue you will receive a letter from UBS under separate cover that should provide the information you requested. This letter was mailed from their offices in Atlanta, Ga on December 1, 2008. For your convenience I have attached a copy of the letter you will receive from UBS.

Regarding my intentions to hold the shares please consider this letter as my written statement that, in accordance with Rule 14a-8(b), it is my intention to continue to hold the shares through the date of the 2009 meeting of shareholders.

Thank you,


Andrea Loyd Bell

Harold Loyd By Pass Trust
U/W DTD 11/1/99
Andrea Loyd Bell Trustee

BANK OF AMERICA SHAREHOLDER PROPOSAL

PROPOSAL: To approve a proposal to request that the Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

SUPPORTING STATEMENT: On October 6-7, 2008 company management took deliberate actions that resulted in a significant reduction in shareholder value. These actions included offering approximately 455 million shares of common stock priced at \$22 per share which was significantly below the market value and reducing the quarterly dividend to \$0.32 from \$0.64. While these actions may be in the long term best interest of the company, it would be inconsistent and inappropriate for named executives to profit while shareholders suffer. Therefore the purpose of this proposal is to align executive's interests with those of the shareholders by requiring that no named executive officer accrues or receives any value from any variable pay arrangement until such time as the lost shareholder value has been restored.

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

November 24, 2006

Bank of America Corporation
Attn: Shareholder Relations
100 North Tryon Street
Charlotte, NC 28255

To whom it may concern:

We are shareholders in Bank of America Corporation. In our four accounts at Smith Barney we have 21,128 common shares. See enclosed Smith Barney statements (highlighted).

Enclosed please also find a proposal to the shareholders of Bank of America to be included on the proxy ballot for the annual meeting next calendar year in 2009. In a recent conversation with BAC's corporate headquarters we were told such ballot questions need to be submitted by December 9, 2008 to be included. We are therefore forwarding this communication by certified mail to ensure its timely arrival.

We can be reached at the Florida address above after December 29, 2008. The telephone there is [redacted]. Until that time we will be at [redacted]. Please contact us with any proposed wording or format changes that may be necessary to comply with existing corporate covenants regarding such matters.

*** FISMA & OMB Memorandum M-07-16 ***

*** FISMA & OMB Memorandum M-07-16 ***

Respectfully submitted,

Donald M. Schwartz
Donald M. Schwartz
Judith A. Schwartz
Judith A. Schwartz

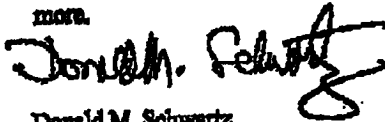
ENCLOSURE
NOV 28 09
BANK OF AMERICA
LEGAL DEPARTMENT

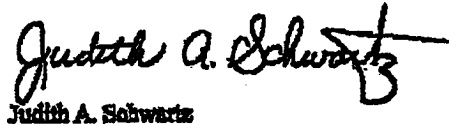
WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and

WHEREAS: The common stock dividend of Bank of America Corporation has been reduced by 50%, even after assurances by the president and CEO that it was safe, and

WHEREAS: Top tier management of Bank of America Corporation, must, in spite of a severe economic downturn, bear its share of the responsibility for the poor performance of the corporation,

THEREFORE, BE IT RESOLVED: That the common stockholders of Bank of America Corporation recommend that top tier management of Bank of America Corporation voluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices. We further recommend that the voluntary actions listed above remain in effect until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs and remains above that figure for six months or more.


Donald M. Schwartz


Judith A. Schwartz



Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Indiana Laborers' Pension Fund
c/o Laborers' International Union
of North America
Attention: Ms. Jennifer O'Dell
905 16th Street NW
Washington, DC 20006

Re: Bank of America Corporation (the "Corporation")

Dear Ms. O'Dell:

On November 17, 2008, we received Indiana Laborers' Pension Fund's ("Fund") request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider the Fund's request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in the Fund's submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(e) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe the Fund has submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(e) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise the Fund's submission so that the Fund is submitting only one proposal.

Our records do not reflect that the Fund is the "record" holder of their shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of the Fund's shares, verifying that, at the time the Fund submitted their proposal, the Fund held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our proxy statement.

Again, please note that if we do not receive the Fund's revised submission and their ownership documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our 2009 proxy statement.

Bank of America, 100 Water Street
101 S. Tryon Street, Charlotte, NC 28280

Legal/2008

In asking the Fund to provide the foregoing information, the Corporation does not relinquish its right to later object to including the Fund's proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NCI-002-29-01, 101 South Tryon Street, Charlotte, NC 28235. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,

Kristin Marie Oberheu

Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment

SENDER: COMPLETE THIS SECTION

Complete items 1, 8, and 9. Also complete item 4 if Restricted Delivery is desired.
 Print your name and address on this message so that we can return the card to you.
 Attach this card in the back of this envelope, or on the back if space permits.
 1. Addressee Information

Industrial Laborers' Federation, Local
 660 Lehigh Valley International Union of
 North America
 Attn: Mr. Jennifer O'Dell
 20316th Street NW
 Washington, DC 20006

2. Addressee (Sender does not make this)
 7004 24th Street NW
 Washington, DC 20004

3. Service Type
 Certified Mail
 Registered
 Insured (add \$3.00)
 Return Receipt for Restricted Delivery (add \$2.00)
 Signature Required (add \$2.00)

4. Restricted Delivery (See Form 3800)
 No

5. Return Address (Sender's)
 7004 24th Street NW
 Washington, DC 20004

6. Postage (Sender's)
 7004 24th Street NW
 Washington, DC 20004

7. Postmark (Sender's)
 7004 24th Street NW
 Washington, DC 20004

8. Delivery Point (Sender's)
 7004 24th Street NW
 Washington, DC 20004

9. Delivery Point (Addressee's)
 7004 24th Street NW
 Washington, DC 20004

10. Delivery Point (Post Office)
 7004 24th Street NW
 Washington, DC 20004

11. Delivery Point (Post Office)
 7004 24th Street NW
 Washington, DC 20004

12. Delivery Point (Post Office)
 7004 24th Street NW
 Washington, DC 20004

13. Delivery Point (Post Office)
 7004 24th Street NW
 Washington, DC 20004

Bell

*** FISMA & OMB Memorandum M-07-16 ***

p. 2

Bank of America

Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Ms. Andrea Loyd Bell

*** FISMA & OMB Memorandum M-07-16 ***

Re: Bank of America Corporation (the "Corporation")

Dear Ms. Bell:

On November 18, 2008, we received your request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider your request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in your submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe you have submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(c) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please review your submission so that you are submitting only one proposal.

Our records do not reflect that you are the "record" holder of your shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of your shares, verifying that, at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our proxy statement.

In addition, under Rule 14a-8(b), you must also provide us with a written statement that you intend to continue to hold your securities through the date of the 2009 annual meeting of shareholders. We must receive your written statement within 14 calendar days of your receipt of this letter.

Bank of America, NA-2008-01
101 N. Tryon Street, Charlotte, NC 28220

Legal Dept

Again, please note that if we do not receive your revised submission, your ownership documentation or your written statement within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our 2009 proxy statement.

In asking you to provide the foregoing information, the Corporation does not relinquish its right to later object to including your proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberhen, Bank of America Corporation, NC1-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-326-7443.

Very truly yours,



Kristin Marie Oberhen, NCCP
Vice President/Senior Paralegal

Attachment

ADDRESS LABELS TO BE PRINTED

Complete items 1, 2, and 3. Also complete item 4 if residential delivery is checked. Print your permanent address on this request so that we can return the card to you. Attach this card to the back of this envelope or on the back of a separate envelope.

1. Addressee Information

Mr. Andrew Lloyd Bell

2. Delivery Point

2004 3340 DUBY 1426 7704

3. Addressee Information

Mr. Andrew Lloyd Bell

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Mr. Andrew Lloyd Bell

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Mr. Andrew Lloyd Bell

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Mr. Andrew Lloyd Bell

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Mr. Andrew Lloyd Bell

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Mr. Andrew Lloyd Bell

96. Delivery Point

2004 3340 DUBY 1426 7704

97. Addressee Information

Mr. Andrew Lloyd Bell

98. Delivery Point

2004 3340 DUBY 1426 7704

99. Addressee Information

Mr. Andrew Lloyd Bell

100. Delivery Point

2004 3340 DUBY 1426 7704



UBS Financial Services Inc.
2425 Piedmont Rd. NE
Suite 1700
Atlanta, GA 30328
Tel: 404-760-3000
Fax: 404-760-3000
Toll Free: 800-334-8328

Leonard M. Starr, CIMA®
Senior Vice President - Investments
Advisory & Brokerage Services
Prime Consultant
Prime Asset Counseling Program
leonard.starr@ubs.com
www.ubs.com

December 1, 2008

Bank of America
Kristin Marie Goshen
101 E Tryon Street
Charlotte, NC 28286

Dear Kristin,

Mrs. Andrea Lloyd Bell is the trustee for the Harold Lloyd Bypass Trust dated 11/31/86 that is held at UBS. The trust holds 7,182 Bank of America shares. The Trust has owned all of the BAO shares longer than one year. If you have any questions please call me at 404-760-3000.

Sincerely,

Leonard Starr
Leonard Starr, CIMA
Senior Vice President-Investments
Advisory & Brokerage Services

cc: Andrea Lloyd Bell

**HUNTON &
WILLIAMS**

EXHIBIT B

See attached.

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

November 24, 2006

Bank of America Corporation
Attn: Shareholder Relations
100 North Tryon Street
Charlotte, NC 28255

To whom it may concern:

We are shareholders in Bank of America Corporation. In our four accounts at Smith Barney we have 21,128 common shares. See enclosed Smith Barney statements (highlighted).

Enclosed please also find a proposal to the shareholders of Bank of America to be included on the proxy ballot for the annual meeting next calendar year in 2009. In a recent conversation with BAC's corporate headquarters we were told such ballot questions need to be submitted by December 9, 2008 to be included. We are therefore forwarding this communication by certified mail to ensure its timely arrival.

We can be reached at the Florida address above after December 29, 2008. The telephone ~~there is~~ **until that time we will be at**

*** FISMA & OMB Memorandum M-07-16 *** **with telephone** ~~OMB Memorandum~~ **Please contact us with any proposed wording** ~~OMB Memorandum~~ **or format changes that may be necessary to comply with existing corporate covenants** ~~OMB Memorandum~~ **regarding such matters.**

*** FISMA & OMB Memorandum M-07-16 ***

Respectfully submitted,

Donald M. Schwartz
Donald M. Schwartz
Judith A. Schwartz
Judith A. Schwartz

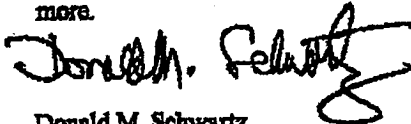
CHARLOTTE, NC
NOV 28 08
BANK OF AMERICA
LEGAL DEPARTMENT

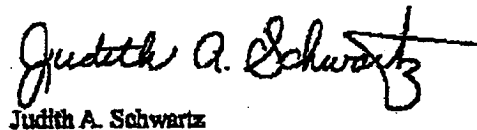
WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and

WHEREAS: The common stock dividend of Bank of America Corporation has been reduced by 50%, even after assurances by the president and CEO that it was safe, and

WHEREAS: Top tier management of Bank of America Corporation, must, in spite of a severe economic downturn, bear its share of the responsibility for the poor performance of the corporation,

THEREFORE, BE IT RESOLVED: That the common stockholders of Bank of America Corporation recommend that top tier management of Bank of America Corporation Voluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices. We further recommend that the voluntary actions listed above remain in effect until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs and remains above that figure for six months or more.


Donald M. Schwartz


Judith A. Schwartz

**HUNTON &
WILLIAMS**

EXHIBIT C

See attached.



Legal Department

December 10, 2008

Delivery by Federal Express
Overnight Delivery

Mr. Donald Schwartz
Mrs. Judith Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

Re: Bank of America Corporation (the "Corporation")

Dear Mr. and Mrs. Schwartz:

On November 28, 2008, we received your request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider your request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in your submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe you have submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(c) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise your submission so that you are submitting only one proposal.

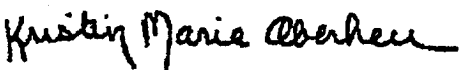
In addition, under Rule 14a-8(b), you must also provide us with a written statement that you intend to continue to hold your securities through the date of the 2009 annual meeting of shareholders. We must receive your written statement within 14 calendar days of your receipt of this letter.

Again, please note that if we do not receive your revised submission or your written statement within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our 2009 proxy statement.

In asking you to provide the foregoing information, the Corporation does not relinquish its right to later object to including your proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberhen, Bank of America Corporation, NCI-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberhen, NCCP
Vice President/Senior Paralegal

Attachment

**HUNTON &
WILLIAMS**

EXHIBIT B

See attached.

Donald and Judith Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

December 19, 2008

Kristin Marie Oberheu
Bank of America Corporation
NC1-002-29-01
101 South Tryon Street
Charlotte, NC 28255

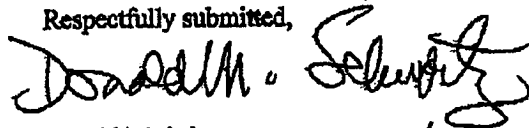
Dear Ms. Oberheu:

This is in regard to your letter of December 10, 2008. We had previously submitted a question to be placed on the proxy for the next annual meeting. You referred to our attempt to include "several stockholder proposals". There was only ONE proposal: That in light of the corporation's poor performance that top tier management should bear some of the financial burden. HOWEVER, I have included a revised proposal (included). Any further arguments along the line of "several" proposals will be referred by me to the Securities and Exchange Commission.

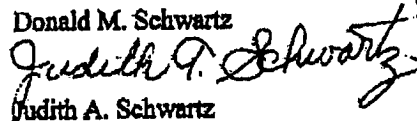
Also included with this letter is our statement that we intend to continue to hold our stock through calendar year 2009.

Also, you referred to a time limit of 14 calendar days for our reply. If you will read our original letter more closely (included), you will note that we said we would be in Pennsylvania until December 29, 2008. Since you FedEx'ed your letter to the Florida address, it took several extra days for your reply to reach us. Only an alert Florida neighbor enabled us to get your reply at all. Although you should receive this letter within the 14 days, we reserve the right to several extra days if you do not receive it in the original time frame you laid out.

Respectfully submitted,



Donald M. Schwartz



Judith A. Schwartz

REVISED QUESTION FOR PROXY BALLOT

WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and the common stock dividend has been reduced by 50%,

THEREFORE BE IT RESOLVED: That the shareholders of Bank of America Corporation recommend that top tier management of Bank Of America Corporation voluntarily and temporarily reduce their compensation in all forms by 50% until such time as the stock regains a price of 50% of its all-time highs, with full dividend restoration.

SUPPORTING STATEMENT

Top tier management of Bank of America Corporation must, in spite of the severe economic downturn, bear its share of the responsibility for the poor performance of the corporation. While many jobs in the corporation are being cut or eliminated and stockholders are suffering a massive percentage income loss, the owners of the corporation feel top management should "bite the bullet" as well.

EXHIBIT C

See attached.

EX-10.1 5 dex101.htm LETTER AGREEMENT, DATED OCTOBER 26, 2008

Exhibit 10.1

UNITED STATES DEPARTMENT OF THE TREASURY
1500 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20220

Dear Ladies and Gentlemen:

The company set forth on the signature page hereto (the "*Company*") intends to issue in a private placement the number of shares of a series of its preferred stock set forth on Schedule A hereto (the "*Preferred Shares*") and a warrant to purchase the number of shares of its common stock set forth on Schedule A hereto (the "*Warrant*" and, together with the Preferred Shares, the "*Purchased Securities*") and the United States Department of the Treasury (the "*Investor*") intends to purchase from the Company the Purchased Securities.

The purpose of this letter agreement is to confirm the terms and conditions of the purchase by the Investor of the Purchased Securities. Except to the extent supplemented or superseded by the terms set forth herein or in the Schedules hereto, the provisions contained in the Securities Purchase Agreement – Standard Terms attached hereto as Exhibit A (the "*Securities Purchase Agreement*") are incorporated by reference herein. Terms that are defined in the Securities Purchase Agreement are used in this letter agreement as so defined. In the event of any inconsistency between this letter agreement and the Securities Purchase Agreement, the terms of this letter agreement shall govern.

Each of the Company and the Investor hereby agrees that if the closing (the "*Merger Closing*") of the transactions contemplated by the Agreement and Plan of Merger (the "*Merger Agreement*"), dated as of September 15, 2008, by and between Merrill Lynch & Co., Inc. ("*Merrill Lynch*") and the Company occurs prior to the closing (the "*Merrill Lynch CPP Closing*") of the purchase of securities of Merrill Lynch by the Investor contemplated by the letter agreement, dated as of the date hereof, between the Investor and Merrill Lynch, then the Company shall issue, and the Investor shall purchase (the "*Additional Purchase*"), (i) 400,000 shares of the Company's Fixed Rate Cumulative Perpetual Stock, Series N (or such other series with terms substantially identical to the Company's Fixed Rate Cumulative Perpetual Stock, Series N) and (ii) a warrant to purchase 48,717,116 shares of Common Stock (with an exercise price of \$30.79 and substantially identical terms as the Warrant) for an aggregate purchase price of \$10,000,000,000. The other terms and conditions set forth in the Securities Purchase Agreement and this letter agreement (including the Schedules hereto) shall apply to the Additional Purchase. The closing of the Additional Purchase will take place at such place, time and date after the Merger Closing as shall be agreed between the Company and the Investor.

If the Merrill Lynch CPP Closing occurs prior to the Merger Closing or if the Merger Agreement is terminated, then the Investor's obligation to consummate the Additional Purchase shall terminate immediately and there shall be no liability on the part of either party hereto to consummate the Additional Purchase.

Each of the Company and the Investor hereby confirms its agreement with the other party with respect to the issuance by the Company of the Purchased Securities, the purchase by the

Investor of the Purchased Securities and the Additional Purchase pursuant to this letter agreement and the Securities Purchase Agreement on the terms specified on Schedule A hereto.

This letter agreement (including the Schedules hereto) and the Securities Purchase Agreement (including the Annexes thereto) and the Warrant constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties, both written and oral, between the parties, with respect to the subject matter hereof. This letter agreement constitutes the "Letter Agreement" referred to in the Securities Purchase Agreement.

This letter agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this letter agreement may be delivered by facsimile and such facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

* * *

In witness whereof, this letter agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the date written below.

UNITED STATES DEPARTMENT OF THE
TREASURY

By: /s/ NEEL KASHKARI

Name: Neel Kashkari

Title: Interim Assistant Secretary for Financial
Stability

COMPANY: BANK OF AMERICA
CORPORATION

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

Name: B. Kenneth Burton, Jr.

Title: Senior Vice President

Date: 10/26/2008

EXHIBIT A

SECURITIES PURCHASE AGREEMENT

STANDARD TERMS

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SECURITIES PURCHASE AGREEMENT – STANDARD TERMS**Recitals:**

WHEREAS, the United States Department of the Treasury (the “*Investor*”) may from time to time agree to purchase shares of preferred stock and warrants from eligible financial institutions which elect to participate in the Troubled Asset Relief Program Capital Purchase Program (“*CPP*”);

WHEREAS, an eligible financial institution electing to participate in the CPP and issue securities to the Investor (referred to herein as the “*Company*”) shall enter into a letter agreement (the “*Letter Agreement*”) with the Investor which incorporates this Securities Purchase Agreement – Standard Terms;

WHEREAS, the Company agrees to expand the flow of credit to U.S. consumers and businesses on competitive terms to promote the sustained growth and vitality of the U.S. economy;

WHEREAS, the Company agrees to work diligently, under existing programs, to modify the terms of residential mortgages as appropriate to strengthen the health of the U.S. housing market;

WHEREAS, the Company intends to issue in a private placement the number of shares of the series of its Preferred Stock (“*Preferred Stock*”) set forth on Schedule A to the Letter Agreement (the “*Preferred Shares*”) and a warrant to purchase the number of shares of its Common Stock (“*Common Stock*”) set forth on Schedule A to the Letter Agreement (the “*Initial Warrant Shares*”) (the “*Warrant*” and, together with the Preferred Shares, the “*Purchased Securities*”) and the Investor intends to purchase (the “*Purchase*”) from the Company the Purchased Securities; and

WHEREAS, the Purchase will be governed by this Securities Purchase Agreement – Standard Terms and the Letter Agreement, including the schedules thereto (the “*Schedules*”), specifying additional terms of the Purchase. This Securities Purchase Agreement – Standard Terms (including the Annexes hereto) and the Letter Agreement (including the Schedules thereto) are together referred to as this “*Agreement*”. All references in this Securities Purchase Agreement – Standard Terms to “*Schedules*” are to the Schedules attached to the Letter Agreement.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

Article I
Purchase; Closing

1.1 Purchase. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to sell to the Investor, and the Investor agrees to purchase from the Company, at the Closing (as hereinafter defined), the Purchased Securities for the price set forth on Schedule A (the “*Purchase Price*”).

1.2 Closing.

(a) On the terms and subject to the conditions set forth in this Agreement, the closing of the Purchase (the "Closing") will take place at the location specified in Schedule A, at the time and on the date set forth in Schedule A or as soon as practicable thereafter, or at such other place, time and date as shall be agreed between the Company and the Investor. The time and date on which the Closing occurs is referred to in this Agreement as the "Closing Date".

(b) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.2, at the Closing the Company will deliver the Preferred Shares and the Warrant, in each case as evidenced by one or more certificates dated the Closing Date and bearing appropriate legends as hereinafter provided for, in exchange for payment in full of the Purchase Price by wire transfer of immediately available United States funds to a bank account designated by the Company on Schedule A.

(c) The respective obligations of each of the Investor and the Company to consummate the Purchase are subject to the fulfillment (or waiver by the Investor and the Company, as applicable) prior to the Closing of the conditions that (i) any approvals or authorizations of all United States and other governmental, regulatory or judicial authorities (collectively, "Governmental Entities") required for the consummation of the Purchase shall have been obtained or made in form and substance reasonably satisfactory to each party and shall be in full force and effect and all waiting periods required by United States and other applicable law, if any, shall have expired and (ii) no provision of any applicable United States or other law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit the purchase and sale of the Purchased Securities as contemplated by this Agreement.

(d) The obligation of the Investor to consummate the Purchase is also subject to the fulfillment (or waiver by the Investor) at or prior to the Closing of each of the following conditions:

(i) (A) the representations and warranties of the Company set forth in (x) Section 2.2(g) of this Agreement shall be true and correct in all respects as though made on and as of the Closing Date, (y) Sections 2.2(a) through (f) shall be true and correct in all material respects as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct in all material respects as of such other date) and (z) Sections 2.2(h) through (v) (disregarding all qualifications or limitations set forth in such representations and warranties as to "materiality", "Company Material Adverse Effect" and words of similar import) shall be true and correct as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct as of such other date), except to the extent that the failure of such representations and warranties referred to in this Section 1.2(d)(i)(A)(z) to be so true and correct, individually or in the aggregate, does not have and would not reasonably be expected to have a Company Material Adverse Effect and (B) the Company shall have

performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing;

(ii) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the conditions set forth in Section 1.2(d)(i) have been satisfied;

(iii) the Company shall have duly adopted and filed with the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity the amendment to its certificate or articles of incorporation, articles of association, or similar organizational document ("*Charter*") in substantially the form attached hereto as Annex A (the "*Certificate of Designations*") and such filing shall have been accepted;

(iv) (A) the Company shall have effected such changes to its compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, "*Benefit Plans*") with respect to its Senior Executive Officers (and to the extent necessary for such changes to be legally enforceable, each of its Senior Executive Officers shall have duly consented in writing to such changes), as may be necessary, during the period that the Investor owns any debt or equity securities of the Company acquired pursuant to this Agreement or the Warrant, in order to comply with Section 111(b) of the Emergency Economic Stabilization Act of 2008 ("*EESA*") as implemented by guidance or regulation thereunder that has been issued and is in effect as of the Closing Date, and (B) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the condition set forth in Section 1.2(d)(iv)(A) has been satisfied;

(v) each of the Company's Senior Executive Officers shall have delivered to the Investor a written waiver in the form attached hereto as Annex B releasing the Investor from any claims that such Senior Executive Officers may otherwise have as a result of the issuance, on or prior to the Closing Date, of any regulations which require the modification of, and the agreement of the Company hereunder to modify, the terms of any Benefit Plans with respect to its Senior Executive Officers to eliminate any provisions of such Benefit Plans that would not be in compliance with the requirements of Section 111(b) of the EESA as implemented by guidance or regulation thereunder that has been issued and is in effect as of the Closing Date;

(vi) the Company shall have delivered to the Investor a written opinion from counsel to the Company (which may be internal counsel), addressed to the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex C;

(vii) the Company shall have delivered certificates in proper form or, with the prior consent of the Investor, evidence of shares in book-entry form, evidencing the Preferred Shares to Investor or its designee(s); and

(viii) the Company shall have duly executed the Warrant in substantially the form attached hereto as Annex D and delivered such executed Warrant to the Investor or its designee(s).

1.3 Interpretation. When a reference is made in this Agreement to "Recitals," "Articles," "Sections," or "Annexes" such reference shall be to a Recital, Article or Section of, or Annex to, this Securities Purchase Agreement – Standard Terms, and a reference to "Schedules" shall be to a Schedule to the Letter Agreement, in each case, unless otherwise indicated. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. References to "herein", "hereof", "hereunder" and the like refer to this Agreement as a whole and not to any particular section or provision, unless the context requires otherwise. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed followed by the words "without limitation." No rule of construction against the draftsman shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by counsel. All references to "\$" or "dollars" mean the lawful currency of the United States of America. Except as expressly stated in this Agreement, all references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and to any section of any statute, rule or regulation include any successor to the section. References to a "*business day*" shall mean 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.

Article II Representations and Warranties

2.1 Disclosure.

(a) "*Company Material Adverse Effect*" means a material adverse effect on (i) the business, results of operation or financial condition of the Company and its consolidated subsidiaries taken as a whole; *provided, however*, that Company Material Adverse Effect shall not be deemed to include the effects of (A) changes after the date of the Letter Agreement (the "*Signing Date*") in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in each case generally affecting the industries in which the Company and its subsidiaries operate, (B) changes or proposed changes after the Signing Date in generally accepted accounting principles in the United States ("*GAAP*") or regulatory accounting requirements, or authoritative interpretations thereof, (C) changes or proposed changes after the Signing Date in securities, banking and other laws of general applicability or related policies or interpretations of Governmental Entities (in the case of each of these clauses (A), (B) and (C), other than changes

or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations), or (D) changes in the market price or trading volume of the Common Stock or any other equity, equity-related or debt securities of the Company or its consolidated subsidiaries (it being understood and agreed that the exception set forth in this clause (D) does not apply to the underlying reason giving rise to or contributing to any such change); or (ii) the ability of the Company to consummate the Purchase and the other transactions contemplated by this Agreement and the Warrant and perform its obligations hereunder or thereunder on a timely basis.

(b) "*Previously Disclosed*" means information set forth or incorporated in the Company's Annual Report on Form 10-K for the most recently completed fiscal year of the Company filed with the Securities and Exchange Commission (the "SEC") prior to the Signing Date (the "*Last Fiscal Year*") or in its other reports and forms filed with or furnished to the SEC under Sections 13(a), 14(a) or 15(d) of the Securities Exchange Act of 1934 (the "*Exchange Act*") on or after the last day of the Last Fiscal Year and prior to the Signing Date.

2.2 Representations and Warranties of the Company. Except as Previously Disclosed, the Company represents and warrants to the Investor that as of the Signing Date and as of the Closing Date (or such other date specified herein):

(a) **Organization, Authority and Significant Subsidiaries.** The Company has been duly incorporated and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, and except as has not, individually or in the aggregate, had and would not reasonably be expected to have a Company Material Adverse Effect, has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification; each subsidiary of the Company that is a "significant subsidiary" within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act of 1933 (the "*Securities Act*") has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization. The Charter and bylaws of the Company, copies of which have been provided to the Investor prior to the Signing Date, are true, complete and correct copies of such documents as in full force and effect as of the Signing Date.

(b) **Capitalization.** The authorized capital stock of the Company, and the outstanding capital stock of the Company (including securities convertible into, or exercisable or exchangeable for, capital stock of the Company) as of the most recent fiscal month-end preceding the Signing Date (the "*Capitalization Date*") is set forth on Schedule B. The outstanding shares of capital stock of the Company have been duly authorized and are validly issued and outstanding, fully paid and nonassessable, and subject to no preemptive rights (and were not issued in violation of any preemptive rights). Except as provided in the Warrant, as of the Signing Date, the Company does not have outstanding any securities or other obligations providing the holder the right to acquire Common Stock that is not reserved for issuance as

specified on Schedule B, and the Company has not made any other commitment to authorize, issue or sell any Common Stock. Since the Capitalization Date, the Company has not issued any shares of Common Stock, other than (i) shares issued upon the exercise of stock options or delivered under other equity-based awards or other convertible securities or warrants which were issued and outstanding on the Capitalization Date and disclosed on Schedule B and (ii) shares disclosed on Schedule B.

(c) Preferred Shares. The Preferred Shares have been duly and validly authorized, and, when issued and delivered pursuant to this Agreement, such Preferred Shares will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock, whether or not issued or outstanding, with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(d) The Warrant and Warrant Shares. The Warrant has been duly authorized and, when executed and delivered as contemplated hereby, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity ("Bankruptcy Exceptions"). The shares of Common Stock issuable upon exercise of the Warrant (the "Warrant Shares") have been duly authorized and reserved for issuance upon exercise of the Warrant and when so issued in accordance with the terms of the Warrant will be validly issued, fully paid and non-assessable, subject, if applicable, to the approvals of its stockholders set forth on Schedule C.

(e) Authorization, Enforceability.

(i) The Company has the corporate power and authority to execute and deliver this Agreement and the Warrant and, subject, if applicable, to the approvals of its stockholders set forth on Schedule C, to carry out its obligations hereunder and thereunder (which includes the issuance of the Preferred Shares, Warrant and Warrant Shares). The execution, delivery and performance by the Company of this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company, subject, in each case, if applicable, to the approvals of its stockholders set forth on Schedule C. This Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the Bankruptcy Exceptions.

(ii) The execution, delivery and performance by the Company of this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby and compliance by the Company with the provisions hereof and

thereof, will not (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any Company Subsidiary under any of the terms, conditions or provisions of (i) subject, if applicable, to the approvals of the Company's stockholders set forth on Schedule C, its organizational documents or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which it or any Company Subsidiary may be bound, or to which the Company or any Company Subsidiary or any of the properties or assets of the Company or any Company Subsidiary may be subject, or (B) subject to compliance with the statutes and regulations referred to in the next paragraph, violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Company or any Company Subsidiary or any of their respective properties or assets except, in the case of clauses (A)(ii) and (B), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(iii) Other than the filing of the Certificate of Designations with the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity, any current report on Form 8-K required to be filed with the SEC, such filings and approvals as are required to be made or obtained under any state "blue sky" laws, the filing of any proxy statement contemplated by Section 3.1 and such as have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Company in connection with the consummation by the Company of the Purchase except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(f) Anti-takeover Provisions and Rights Plan. The Board of Directors of the Company (the "*Board of Directors*") has taken all necessary action to ensure that the transactions contemplated by this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby, including the exercise of the Warrant in accordance with its terms, will be exempt from any anti-takeover or similar provisions of the Company's Charter and bylaws, and any other provisions of any applicable "moratorium", "control share", "fair price", "interested stockholder" or other anti-takeover laws and regulations of any jurisdiction. The Company has taken all actions necessary to render any stockholders' rights plan of the Company inapplicable to this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby, including the exercise of the Warrant by the Investor in accordance with its terms.

(g) No Company Material Adverse Effect. Since the last day of the last completed fiscal period for which the Company has filed a Quarterly Report on Form 10-Q or an Annual

Report on Form 10-K with the SEC prior to the Signing Date, no fact, circumstance, event, change, occurrence, condition or development has occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect.

(h) Company Financial Statements. Each of the consolidated financial statements of the Company and its consolidated subsidiaries (collectively the "*Company Financial Statements*") included or incorporated by reference in the Company Reports filed with the SEC since December 31, 2006, present fairly in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated therein (or if amended prior to the Signing Date, as of the date of such amendment) and the consolidated results of their operations for the periods specified therein; and except as stated therein, such financial statements (A) were prepared in conformity with GAAP applied on a consistent basis (except as may be noted therein), (B) have been prepared from, and are in accordance with, the books and records of the Company and the Company Subsidiaries and (C) complied as to form, as of their respective dates of filing with the SEC, in all material respects with the applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto.

(i) Reports.

(i) Since December 31, 2006, the Company and each subsidiary of the Company (each a "*Company Subsidiary*" and, collectively, the "*Company Subsidiaries*") has timely filed all reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that it was required to file with any Governmental Entity (the foregoing, collectively, the "*Company Reports*") and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. As of their respective dates of filing, the Company Reports complied in all material respects with all statutes and applicable rules and regulations of the applicable Governmental Entities. In the case of each such Company Report filed with or furnished to the SEC, such Company Report (A) did not, as of its date or if amended prior to the Signing Date, as of the date of such amendment, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, and (B) complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act. With respect to all other Company Reports, the Company Reports were complete and accurate in all material respects as of their respective dates. No executive officer of the Company or any Company Subsidiary has failed in any respect to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002.

(ii) The records, systems, controls, data and information of the Company and the Company Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of the Company or the

Company Subsidiaries or their accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described below in this Section 2.2(i)(ii). The Company (A) has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) to ensure that material information relating to the Company, including the consolidated Company Subsidiaries, is made known to the chief executive officer and the chief financial officer of the Company by others within those entities, and (B) has disclosed, based on its most recent evaluation prior to the Signing Date, to the Company's outside auditors and the audit committee of the Board of Directors (x) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

(j) No Undisclosed Liabilities. Neither the Company nor any of the Company Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Company Financial Statements to the extent required to be so reflected or reserved against in accordance with GAAP, except for (A) liabilities that have arisen since the last fiscal year end in the ordinary and usual course of business and consistent with past practice and (B) liabilities that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(k) Offering of Securities. Neither the Company nor any person acting on its behalf has taken any action (including any offering of any securities of the Company under circumstances which would require the integration of such offering with the offering of any of the Purchased Securities under the Securities Act, and the rules and regulations of the SEC promulgated thereunder), which might subject the offering, issuance or sale of any of the Purchased Securities to Investor pursuant to this Agreement to the registration requirements of the Securities Act.

(l) Litigation and Other Proceedings. Except (i) as set forth on Schedule D or (ii) as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, there is no (A) pending or, to the knowledge of the Company, threatened, claim, action, suit, investigation or proceeding, against the Company or any Company Subsidiary or to which any of their assets are subject nor is the Company or any Company Subsidiary subject to any order, judgment or decree or (B) unresolved violation, criticism or exception by any Governmental Entity with respect to any report or relating to any examinations or inspections of the Company or any Company Subsidiaries.

(m) Compliance with Laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the

Company Subsidiaries have all permits, licenses, franchises, authorizations, orders and approvals of, and have made all filings, applications and registrations with, Governmental Entities that are required in order to permit them to own or lease their properties and assets and to carry on their business as presently conducted and that are material to the business of the Company or such Company Subsidiary. Except as set forth on Schedule E, the Company and the Company Subsidiaries have complied in all respects and are not in default or violation of, and none of them is, to the knowledge of the Company, under investigation with respect to or, to the knowledge of the Company, have been threatened to be charged with or given notice of any violation of, any applicable domestic (federal, state or local) or foreign law, statute, ordinance, license, rule, regulation, policy or guideline, order, demand, writ, injunction, decree or judgment of any Governmental Entity, other than such noncompliance, defaults or violations that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Except for statutory or regulatory restrictions of general application or as set forth on Schedule E, no Governmental Entity has placed any restriction on the business or properties of the Company or any Company Subsidiary that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(n) Employee Benefit Matters. Except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect: (A) each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) providing benefits to any current or former employee, officer or director of the Company or any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "Code")) that is sponsored, maintained or contributed to by the Company or any member of its Controlled Group and for which the Company or any member of its Controlled Group would have any liability, whether actual or contingent (each, a "Plan") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Code; (B) with respect to each Plan subject to Title IV of ERISA (including, for purposes of this clause (B), any plan subject to Title IV of ERISA that the Company or any member of its Controlled Group previously maintained or contributed to in the six years prior to the Signing Date), (1) no "reportable event" (within the meaning of Section 4043(c) of ERISA), other than a reportable event for which the notice period referred to in Section 4043(c) of ERISA has been waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (2) no "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (3) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on the assumptions used to fund such Plan) and (4) neither the Company nor any member of its Controlled Group has incurred in the six years prior to the Signing Date, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the PBGC in the ordinary course and without default) in respect of a Plan (including any Plan that is a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA); and (C) each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable

determination letter from the Internal Revenue Service with respect to its qualified status that has not been revoked, or such a determination letter has been timely applied for but not received by the Signing Date, and nothing has occurred, whether by action or by failure to act, which could reasonably be expected to cause the loss, revocation or denial of such qualified status or favorable determination letter.

(o) Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and the Company Subsidiaries have filed all federal, state, local and foreign income and franchise Tax returns required to be filed through the Signing Date, subject to permitted extensions, and have paid all Taxes due thereon, and (ii) no Tax deficiency has been determined adversely to the Company or any of the Company Subsidiaries, nor does the Company have any knowledge of any Tax deficiencies. "Tax" or "Taxes" means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add on minimum, ad valorem, transfer or excise tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Governmental Entity.

(p) Properties and Leases. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances, claims and defects that would affect the value thereof or interfere with the use made or to be made thereof by them. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries hold all leased real or personal property under valid and enforceable leases with no exceptions that would interfere with the use made or to be made thereof by them.

(q) Environmental Liability. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect:

(i) there is no legal, administrative, or other proceeding, claim or action of any nature seeking to impose, or that would reasonably be expected to result in the imposition of, on the Company or any Company Subsidiary, any liability relating to the release of hazardous substances as defined under any local, state or federal environmental statute, regulation or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary;

(ii) to the Company's knowledge, there is no reasonable basis for any such proceeding, claim or action; and

(iii) neither the Company nor any Company Subsidiary is subject to any agreement, order, judgment or decree by or with any court, Governmental Entity or third party imposing any such environmental liability.

(r) **Risk Management Instruments.** Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, all derivative instruments, including, swaps, caps, floors and option agreements, whether entered into for the Company's own account, or for the account of one or more of the Company Subsidiaries or its or their customers, were entered into (i) only in the ordinary course of business, (ii) in accordance with prudent practices and in all material respects with all applicable laws, rules, regulations and regulatory policies and (iii) with counterparties believed to be financially responsible at the time; and each of such instruments constitutes the valid and legally binding obligation of the Company or one of the Company Subsidiaries, enforceable in accordance with its terms, except as may be limited by the Bankruptcy Exceptions. Neither the Company or the Company Subsidiaries, nor, to the knowledge of the Company, any other party thereto, is in breach of any of its obligations under any such agreement or arrangement other than such breaches that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(s) **Agreements with Regulatory Agencies.** Except as set forth on Schedule F, neither the Company nor any Company Subsidiary is subject to any material cease-and-desist or other similar order or enforcement action issued by, or is a party to any material written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any capital directive by, or since December 31, 2006, has adopted any board resolutions at the request of, any Governmental Entity (other than the Appropriate Federal Banking Agencies with jurisdiction over the Company and the Company Subsidiaries) that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its liquidity and funding policies and practices, its ability to pay dividends, its credit, risk management or compliance policies or procedures, its internal controls, its management or its operations or business (each item in this sentence, a "*Regulatory Agreement*"), nor has the Company or any Company Subsidiary been advised since December 31, 2006 by any such Governmental Entity that it is considering issuing, initiating, ordering, or requesting any such Regulatory Agreement. The Company and each Company Subsidiary are in compliance in all material respects with each Regulatory Agreement to which it is party or subject, and neither the Company nor any Company Subsidiary has received any notice from any Governmental Entity indicating that either the Company or any Company Subsidiary is not in compliance in all material respects with any such Regulatory Agreement. "*Appropriate Federal Banking Agency*" means the "appropriate Federal banking agency" with respect to the Company or such Company Subsidiaries, as applicable, as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)).

(t) **Insurance.** The Company and the Company Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with industry practice. The Company and the Company Subsidiaries are in material compliance with their insurance policies and are not in default under any of the material terms thereof, each such policy is outstanding and in full force and effect, all premiums and other payments due under any material policy have been paid, and all claims thereunder have been filed in due and timely fashion, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(u) **Intellectual Property.** Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and each Company Subsidiary owns or otherwise has the right to use, all intellectual property rights, including all trademarks, trade dress, trade names, service marks, domain names, patents, inventions, trade secrets, know-how, works of authorship and copyrights therein, that are used in the conduct of their existing businesses and all rights relating to the plans, design and specifications of any of its branch facilities ("*Proprietary Rights*") free and clear of all liens and any claims of ownership by current or former employees, contractors, designers or others and (ii) neither the Company nor any of the Company Subsidiaries is materially infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries received any written (or, to the knowledge of the Company, oral) communications alleging that any of them has materially infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by any other person. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, to the Company's knowledge, no other person is infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries sent any written communications since January 1, 2006 alleging that any person has infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by the Company and the Company Subsidiaries.

(v) **Brokers and Finders.** No broker, finder or investment banker is entitled to any financial advisory, brokerage, finder's or other fee or commission in connection with this Agreement or the Warrant or the transactions contemplated hereby or thereby based upon arrangements made by or on behalf of the Company or any Company Subsidiary for which the Investor could have any liability.

Article III Covenants

3.1 **Commercially Reasonable Efforts.**

(a) Subject to the terms and conditions of this Agreement, each of the parties will use its commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, so as to permit consummation of the Purchase as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall use commercially reasonable efforts to cooperate with the other party to that end.

(b) If the Company is required to obtain any stockholder approvals set forth on Schedule C, then the Company shall comply with this Section 3.1(b) and Section 3.1(c). The Company shall call a special meeting of its stockholders, as promptly as practicable following the Closing, to vote on proposals (collectively, the "*Stockholder Proposals*") to (i) approve the exercise of the Warrant for Common Stock for purposes of the rules of the national security exchange on which the Common Stock is listed and/or (ii) amend the Company's Charter to increase the number of authorized shares of Common Stock to at least such number as shall be sufficient to permit the full exercise of the Warrant for Common Stock and comply with the

other provisions of this Section 3.1(b) and Section 3.1(c). The Board of Directors shall recommend to the Company's stockholders that such stockholders vote in favor of the Stockholder Proposals. In connection with such meeting, the Company shall prepare (and the Investor will reasonably cooperate with the Company to prepare) and file with the SEC as promptly as practicable (but in no event more than ten business days after the Closing) a preliminary proxy statement, shall use its reasonable best efforts to respond to any comments of the SEC or its staff thereon and to cause a definitive proxy statement related to such stockholders' meeting to be mailed to the Company's stockholders not more than five business days after clearance thereof by the SEC, and shall use its reasonable best efforts to solicit proxies for such stockholder approval of the Stockholder Proposals. The Company shall notify the Investor promptly of the receipt of any comments from the SEC or its staff with respect to the proxy statement and of any request by the SEC or its staff for amendments or supplements to such proxy statement or for additional information and will supply the Investor with copies of all correspondence between the Company or any of its representatives, on the one hand, and the SEC or its staff, on the other hand, with respect to such proxy statement. If at any time prior to such stockholders' meeting there shall occur any event that is required to be set forth in an amendment or supplement to the proxy statement, the Company shall as promptly as practicable prepare and mail to its stockholders such an amendment or supplement. Each of the Investor and the Company agrees promptly to correct any information provided by it or on its behalf for use in the proxy statement if and to the extent that such information shall have become false or misleading in any material respect, and the Company shall as promptly as practicable prepare and mail to its stockholders an amendment or supplement to correct such information to the extent required by applicable laws and regulations. The Company shall consult with the Investor prior to filing any proxy statement, or any amendment or supplement thereto, and provide the Investor with a reasonable opportunity to comment thereon. In the event that the approval of any of the Stockholder Proposals is not obtained at such special stockholders meeting, the Company shall include a proposal to approve (and the Board of Directors shall recommend approval of) each such proposal at a meeting of its stockholders no less than once in each subsequent six-month period beginning on January 1, 2009 until all such approvals are obtained or made.

(c) None of the information supplied by the Company or any of the Company Subsidiaries for inclusion in any proxy statement in connection with any such stockholders meeting of the Company will, at the date it is filed with the SEC, when first mailed to the Company's stockholders and at the time of any stockholders meeting, and at the time of any amendment or supplement thereof, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

3.2 Expenses. Unless otherwise provided in this Agreement or the Warrant, each of the parties hereto will bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated under this Agreement and the Warrant, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

3.3 Sufficiency of Authorized Common Stock; Exchange Listing.

(a) During the period from the Closing Date (or, if the approval of the Stockholder Proposals is required, the date of such approval) until the date on which the Warrant has been fully exercised, the Company shall at all times have reserved for issuance, free of preemptive or similar rights, a sufficient number of authorized and unissued Warrant Shares to effectuate such exercise. Nothing in this Section 3.3 shall preclude the Company from satisfying its obligations in respect of the exercise of the Warrant by delivery of shares of Common Stock which are held in the treasury of the Company. As soon as reasonably practicable following the Closing, the Company shall, at its expense, cause the Warrant Shares to be listed on the same national securities exchange on which the Common Stock is listed, subject to official notice of issuance, and shall maintain such listing for so long as any Common Stock is listed on such exchange.

(b) If requested by the Investor, the Company shall promptly use its reasonable best efforts to cause the Preferred Shares to be approved for listing on a national securities exchange as promptly as practicable following such request.

3.4 Certain Notifications Until Closing. From the Signing Date until the Closing, the Company shall promptly notify the Investor of (i) any fact, event or circumstance of which it is aware and which would reasonably be expected to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate in any material respect or to cause any covenant or agreement of the Company contained in this Agreement not to be complied with or satisfied in any material respect and (ii) except as Previously Disclosed, any fact, circumstance, event, change, occurrence, condition or development of which the Company is aware and which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect; *provided, however*, that delivery of any notice pursuant to this Section 3.4 shall not limit or affect any rights of or remedies available to the Investor; *provided, further*, that a failure to comply with this Section 3.4 shall not constitute a breach of this Agreement or the failure of any condition set forth in Section 1.2 to be satisfied unless the underlying Company Material Adverse Effect or material breach would independently result in the failure of a condition set forth in Section 1.2 to be satisfied.

3.5 Access, Information and Confidentiality.

(a) From the Signing Date until the date when the Investor holds an amount of Preferred Shares having an aggregate liquidation value of less than 10% of the Purchase Price, the Company will permit the Investor and its agents, consultants, contractors and advisors (x) acting through the Appropriate Federal Banking Agency, to examine the corporate books and make copies thereof and to discuss the affairs, finances and accounts of the Company and the Company Subsidiaries with the principal officers of the Company, all upon reasonable notice and at such reasonable times and as often as the Investor may reasonably request and (y) to review any information material to the Investor's investment in the Company provided by the Company to its Appropriate Federal Banking Agency. Any investigation pursuant to this Section 3.5 shall be conducted during normal business hours and in such manner as not to interfere unreasonably with the conduct of the business of the Company, and nothing herein shall require the Company or any Company Subsidiary to disclose any information to the Investor to the extent (i) prohibited by applicable law or regulation, or (ii) that such disclosure would reasonably be

expected to cause a violation of any agreement to which the Company or any Company Subsidiary is a party or would cause a risk of a loss of privilege to the Company or any Company Subsidiary (*provided* that the Company shall use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances where the restrictions in this clause (ii) apply).

(b) The Investor will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents, consultants, contractors and advisors to hold, in confidence all non-public records, books, contracts, instruments, computer data and other data and information (collectively, "*Information*") concerning the Company furnished or made available to it by the Company or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (i) previously known by such party on a non-confidential basis, (ii) in the public domain through no fault of such party or (iii) later lawfully acquired from other sources by the party to which it was furnished (and without violation of any other confidentiality obligation)); *provided* that nothing herein shall prevent the Investor from disclosing any Information to the extent required by applicable laws or regulations or by any subpoena or similar legal process.

Article IV Additional Agreements

4.1 Purchase for Investment. The Investor acknowledges that the Purchased Securities and the Warrant Shares have not been registered under the Securities Act or under any state securities laws. The Investor (a) is acquiring the Purchased Securities pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute them to any person in violation of the Securities Act or any applicable U.S. state securities laws, (b) will not sell or otherwise dispose of any of the Purchased Securities or the Warrant Shares, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws, and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Purchase and of making an informed investment decision.

4.2 Legends.

(a) The Investor agrees that all certificates or other instruments representing the Warrant and the Warrant Shares will bear a legend substantially to the following effect:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS."

(b) The Investor agrees that all certificates or other instruments representing the Warrant will also bear a legend substantially to the following effect:

“THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.”

(c) In addition, the Investor agrees that all certificates or other instruments representing the Preferred Shares will bear a legend substantially to the following effect:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION

REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.”

(d) In the event that any Purchased Securities or Warrant Shares (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Company shall issue new certificates or other instruments representing such Purchased Securities or Warrant Shares, which shall not contain the applicable legends in Sections 4.2(a) and (c) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments. Upon Transfer of all or a portion of the Warrant in compliance with Section 4.4, the Company shall issue new certificates or other instruments representing the Warrant, which shall not contain the applicable legend in Section 4.2(b) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments.

4.3 Certain Transactions. The Company will not merge or consolidate with, or sell, transfer or lease all or substantially all of its property or assets to, any other party unless the successor, transferee or lessee party (or its ultimate parent entity), as the case may be (if not the Company), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Agreement to be performed and observed by the Company.

4.4 Transfer of Purchased Securities and Warrant Shares; Restrictions on Exercise of the Warrant. Subject to compliance with applicable securities laws, the Investor shall be permitted to transfer, sell, assign or otherwise dispose of (“*Transfer*”) all or a portion of the Purchased Securities or Warrant Shares at any time, and the Company shall take all steps as may be reasonably requested by the Investor to facilitate the Transfer of the Purchased Securities and the Warrant Shares; *provided* that the Investor shall not Transfer a portion or portions of the Warrant with respect to, and/or exercise the Warrant for, more than one-half of the Initial Warrant Shares (as such number may be adjusted from time to time pursuant to Section 13 thereof) in the aggregate until the earlier of (a) the date on which the Company (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Purchase Price (and the purchase price paid by the Investor to any such successor for securities of such successor purchased under the CPP) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor) and (b) December 31, 2009. “*Qualified Equity Offering*” means the sale and issuance for cash by the Company to persons other than the Company or any of the Company Subsidiaries after the Closing 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 Company at the time of issuance under the applicable risk-based capital guidelines of the Company’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). "*Business Combination*" means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company's stockholders.

4.5 Registration Rights.

(a) Registration.

(i) Subject to the terms and conditions of this Agreement, the Company covenants and agrees that as promptly as practicable after the Closing Date (and in any event no later than 30 days after the Closing Date), the Company shall prepare and file with the SEC a Shelf Registration Statement covering all Registrable Securities (or otherwise designate an existing Shelf Registration Statement filed with the SEC to cover the Registrable Securities), and, to the extent the Shelf Registration Statement has not theretofore been declared effective or is not automatically effective upon such filing, the Company shall use reasonable best efforts to cause such Shelf Registration Statement to be declared or become effective and to keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of such Registrable Securities for a period from the date of its initial effectiveness until such time as there are no Registrable Securities remaining (including by refiling such Shelf Registration Statement (or a new Shelf Registration Statement) if the initial Shelf Registration Statement expires). So long as the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) at the time of filing of the Shelf Registration Statement with the SEC, such Shelf Registration Statement shall be designated by the Company as an automatic Shelf Registration Statement. Notwithstanding the foregoing, if on the Signing Date the Company is not eligible to file a registration statement on Form S-3, then the Company shall not be obligated to file a Shelf Registration Statement unless and until requested to do so in writing by the Investor.

(ii) Any registration pursuant to Section 4.5(a)(i) shall be effected by means of a shelf registration on an appropriate form under Rule 415 under the Securities Act (a "*Shelf Registration Statement*"). If the Investor or any other Holder intends to distribute any Registrable Securities by means of an underwritten offering it shall promptly so advise the Company and the Company shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 4.5(c); *provided* that the Company shall not be required to facilitate an underwritten offering of Registrable Securities unless the expected gross proceeds from such offering exceed (i) 2% of the initial aggregate liquidation preference of the Preferred Shares if such initial aggregate liquidation preference is less than \$2 billion and (ii) \$200 million if the initial aggregate liquidation preference of the Preferred Shares is equal to or greater than \$2 billion. The lead underwriters in any such distribution shall be selected by the Holders of a majority of the Registrable Securities to be distributed; *provided* that to the extent appropriate and permitted under applicable law, such Holders shall consider the qualifications of any broker-dealer Affiliate of the Company in selecting the lead underwriters in any such distribution.

(iii) The Company shall not be required to effect a registration (including a resale of Registrable Securities from an effective Shelf Registration Statement) or an underwritten offering pursuant to Section 4.5(a): (A) with respect to securities that are not Registrable Securities; or (B) if the Company has notified the Investor and all other Holders that in the good faith judgment of the Board of Directors, it would be materially detrimental to the Company or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Company shall have the right to defer such registration for a period of not more than 45 days after receipt of the request of the Investor or any other Holder; *provided* that such right to delay a registration or underwritten offering shall be exercised by the Company (1) only if the Company has generally exercised (or is concurrently exercising) similar black-out rights against holders of similar securities that have registration rights and (2) not more than three times in any 12-month period and not more than 90 days in the aggregate in any 12-month period.

(iv) If during any period when an effective Shelf Registration Statement is not available, the Company proposes to register any of its equity securities, other than a registration pursuant to Section 4.5(a)(i) or a Special Registration, and the registration form to be filed may be used for the registration or qualification for distribution of Registrable Securities, the Company will give prompt written notice to the Investor and all other Holders of its intention to effect such a registration (but in no event less than ten days prior to the anticipated filing date) and will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten business days after the date of the Company's notice (a "*Piggyback Registration*"). Any such person that has made such a written request may withdraw its Registrable Securities from such Piggyback Registration by giving written notice to the Company and the managing underwriter, if any, on or before the fifth business day prior to the planned effective date of such Piggyback Registration. The Company may terminate or withdraw any registration under this Section 4.5(a)(iv) prior to the effectiveness of such registration, whether or not Investor or any other Holders have elected to include Registrable Securities in such registration.

(v) If the registration referred to in Section 4.5(a)(iv) is proposed to be underwritten, the Company will so advise Investor and all other Holders as a part of the written notice given pursuant to Section 4.5(a)(iv). In such event, the right of Investor and all other Holders to registration pursuant to Section 4.5(a) will be conditioned upon such persons' participation in such underwriting and the inclusion of such person's Registrable Securities in the underwriting if such securities are of the same class of securities as the securities to be offered in the underwritten offering, and each such person will (together with the Company and the other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company; *provided* that the Investor (as opposed to other Holders) shall not be required to indemnify any person in connection with any registration. If any participating person disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice

to the Company, the managing underwriters and the Investor (if the Investor is participating in the underwriting).

(vi) If either (x) the Company grants "piggyback" registration rights to one or more third parties to include their securities in an underwritten offering under the Shelf Registration Statement pursuant to Section 4.5(a)(ii) or (y) a Piggyback Registration under Section 4.5(a)(iv) relates to an underwritten offering on behalf of the Company, and in either case the managing underwriters advise the Company that in their reasonable opinion the number of securities requested to be included in such offering exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such managing underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), which securities will be so included in the following order of priority: (A) first, in the case of a Piggyback Registration under Section 4.5(a)(iv), the securities the Company proposes to sell, (B) then the Registrable Securities of the Investor and all other Holders who have requested inclusion of Registrable Securities pursuant to Section 4.5(a)(ii) or Section 4.5(a)(iv), as applicable, *pro rata* on the basis of the aggregate number of such securities or shares owned by each such person and (C) lastly, any other securities of the Company that have been requested to be so included, subject to the terms of this Agreement; *provided, however*, that if the Company has, prior to the Signing Date, entered into an agreement with respect to its securities that is inconsistent with the order of priority contemplated hereby then it shall apply the order of priority in such conflicting agreement to the extent that it would otherwise result in a breach under such agreement.

(b) Expenses of Registration. All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by the holders of the securities so registered *pro rata* on the basis of the aggregate offering or sale price of the securities so registered.

(c) Obligations of the Company. The Company shall use its reasonable best efforts, for so long as there are Registrable Securities outstanding, to take such actions as are under its control to not become an ineligible issuer (as defined in Rule 405 under the Securities Act) and to remain a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) if it has such status on the Signing Date or becomes eligible for such status in the future. In addition, whenever required to effect the registration of any Registrable Securities or facilitate the distribution of Registrable Securities pursuant to an effective Shelf Registration Statement, the Company shall, as expeditiously as reasonably practicable:

(i) Prepare and file with the SEC a prospectus supplement with respect to a proposed offering of Registrable Securities pursuant to an effective registration statement, subject to Section 4.5(d), keep such registration statement effective and keep

such prospectus supplement current until the securities described therein are no longer Registrable Securities.

(ii) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(iii) Furnish to the Holders and any underwriters such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by them.

(iv) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders or any managing underwriter(s), to keep such registration or qualification in effect for so long as such registration statement remains in effect, and to take any other action which may be reasonably necessary to enable such seller to consummate the disposition in such jurisdictions of the securities owned by such Holder; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(v) Notify each Holder of Registrable Securities at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the applicable prospectus, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing.

(vi) Give written notice to the Holders:

(A) when any registration statement filed pursuant to Section 4.5(a) or any amendment thereto has been filed with the SEC (except for any amendment effected by the filing of a document with the SEC pursuant to the Exchange Act) and when such registration statement or any post-effective amendment thereto has become effective;

(B) of any request by the SEC for amendments or supplements to any registration statement or the prospectus included therein or for additional information;

(C) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose;

(D) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(E) of the happening of any event that requires the Company to make changes in any effective registration statement or the prospectus related to the registration statement in order to make the statements therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made); and

(F) if at any time the representations and warranties of the Company contained in any underwriting agreement contemplated by Section 4.5(c)(x) cease to be true and correct.

(vii) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 4.5(c)(vi)(C) at the earliest practicable time.

(viii) Upon the occurrence of any event contemplated by Section 4.5(c)(v) or 4.5(c)(vi)(E), promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Holders and any underwriters, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with Section 4.5(c)(vi)(E) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Holders and any underwriters shall suspend use of such prospectus and use their reasonable best efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in such Holders' or underwriters' possession. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(ix) Use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Holders or any managing underwriter(s).

(x) If an underwritten offering is requested pursuant to Section 4.5(a)(ii), enter into an underwriting agreement in customary form, scope and substance and take all such

other actions reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities, and in connection therewith in any underwritten offering (including making members of management and executives of the Company available to participate in "road shows", similar sales events and other marketing activities), (A) make such representations and warranties to the Holders that are selling stockholders and the managing underwriter(s), if any, with respect to the business of the Company and its subsidiaries, and the Shelf Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in customary form, substance and scope, and, if true, confirm the same if and when requested, (B) use its reasonable best efforts to furnish the underwriters with opinions of counsel to the Company, addressed to the managing underwriter(s), if any, covering the matters customarily covered in such opinions requested in underwritten offerings, (C) use its reasonable best efforts to obtain "cold comfort" letters from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company for which financial statements and financial data are included in the Shelf Registration Statement) who have certified the financial statements included in such Shelf Registration Statement, addressed to each of the managing underwriter(s), if any, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters, (D) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures customary in underwritten offerings (provided that the Investor shall not be obligated to provide any indemnity), and (E) deliver such documents and certificates as may be reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith, their counsel and the managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

(xi) Make available for inspection by a representative of Holders that are selling stockholders, the managing underwriter(s), if any, and any attorneys or accountants retained by such Holders or managing underwriter(s), at the offices where normally kept, during reasonable business hours, financial and other records, pertinent corporate documents and properties of the Company, and cause the officers, directors and employees of the Company to supply all information in each case reasonably requested (and of the type customarily provided in connection with due diligence conducted in connection with a registered public offering of securities) by any such representative, managing underwriter(s), attorney or accountant in connection with such Shelf Registration Statement.

(xii) Use reasonable best efforts to cause all such Registrable Securities to be listed on each national securities exchange on which similar securities issued by the Company are then listed or, if no similar securities issued by the Company are then listed on any national securities exchange, use its reasonable best efforts to cause all such

Registrable Securities to be listed on such securities exchange as the Investor may designate.

(xiii) If requested by Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith, or the managing underwriter(s), if any, promptly include in a prospectus supplement or amendment such information as the Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith or managing underwriter(s), if any, may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such amendment as soon as practicable after the Company has received such request.

(xiv) Timely provide to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(d) Suspension of Sales. Upon receipt of written notice from the Company that a registration statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits or may omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that circumstances exist that make inadvisable use of such registration statement, prospectus or prospectus supplement, the Investor and each Holder of Registrable Securities shall forthwith discontinue disposition of Registrable Securities until the Investor and/or Holder has received copies of a supplemented or amended prospectus or prospectus supplement, or until the Investor and/or such Holder is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Investor and/or such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Investor and/or such Holder's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(e) Termination of Registration Rights. A Holder's registration rights as to any securities held by such Holder (and its Affiliates, partners, members and former members) shall not be available unless such securities are Registrable Securities.

(f) Furnishing Information.

(i) Neither the Investor nor any Holder shall use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of the Company.

(ii) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 4.5(c) that Investor and/or the selling Holders and the underwriters, if any, shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of

disposition of such securities as shall be required to effect the registered offering of their Registrable Securities.

(g) Indemnification.

(i) The Company agrees to indemnify each Holder and, if a Holder is a person other than an individual, such Holder's officers, directors, employees, agents, representatives and Affiliates, and each Person, if any, that controls a Holder within the meaning of the Securities Act (each, an "Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals incurred in connection with investigating, defending, settling, compromising or paying any such losses, claims, damages, actions, liabilities, costs and expenses), joint or several, arising out of or based upon any untrue statement or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or any documents incorporated therein by reference or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided*, that the Company shall not be liable to such Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (A) an untrue statement or omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by such Indemnitee for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto, or (B) offers or sales effected by or on behalf of such Indemnitee "by means of" (as defined in Rule 159A) a "free writing prospectus" (as defined in Rule 405) that was not authorized in writing by the Company.

(ii) If the indemnification provided for in Section 4.5(g)(i) is unavailable to an Indemnitee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnitee harmless as contemplated therein, then the Company, in lieu of indemnifying such Indemnitee, shall contribute to the amount paid or payable by such Indemnitee as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnitee, on the one hand, and the Company, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant

equitable considerations. The relative fault of the Company, on the one hand, and of the Indemnitee, on the other hand, shall be determined by reference to, among other factors, whether the untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company or by the Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 4.5(g)(ii) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 4.5(g)(i). No Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Company if the Company was not guilty of such fraudulent misrepresentation.

(h) Assignment of Registration Rights. The rights of the Investor to registration of Registrable Securities pursuant to Section 4.5(a) may be assigned by the Investor to a transferee or assignee of Registrable Securities with a liquidation preference or, in the case of Registrable Securities other than Preferred Shares, a market value, no less than an amount equal to (i) 2% of the initial aggregate liquidation preference of the Preferred Shares if such initial aggregate liquidation preference is less than \$2 billion and (ii) \$200 million if the initial aggregate liquidation preference of the Preferred Shares is equal to or greater than \$2 billion; *provided, however*, the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned. For purposes of this Section 4.5(h), "market value" per share of Common Stock shall be the last reported sale price of the Common Stock on the national securities exchange on which the Common Stock is listed or admitted to trading on the last trading day prior to the proposed transfer, and the "market value" for the Warrant (or any portion thereof) shall be the market value per share of Common Stock into which the Warrant (or such portion) is exercisable less the exercise price per share.

(i) Clear Market. With respect to any underwritten offering of Registrable Securities by the Investor or other Holders pursuant to this Section 4.5, the Company agrees not to effect (other than pursuant to such registration or pursuant to a Special Registration) any public sale or distribution, or to file any Shelf Registration Statement (other than such registration or a Special Registration) covering, in the case of an underwritten offering of Common Stock or Warrants, any of its equity securities or, in the case of an underwritten offering of Preferred Shares, any Preferred Stock of the Company, or, in each case, any securities convertible into or exchangeable or exercisable for such securities, during the period not to exceed ten days prior and 60 days following the effective date of such offering or such longer period up to 90 days as may be requested by the managing underwriter for such underwritten offering. The Company also agrees to cause such of its directors and senior executive officers to execute and deliver customary lock-up agreements in such form and for such time period up to 90 days as may be requested by the managing underwriter. "*Special Registration*" means the registration of (A) equity securities and/or options or other rights in respect thereof solely registered on Form S-4 or Form S-8 (or successor form) or (B) shares of equity securities and/or options or other rights in respect thereof to be offered to directors, members of management, employees, consultants,

customers, lenders or vendors of the Company or Company Subsidiaries or in connection with dividend reinvestment plans.

(j) Rule 144; Rule 144A. With a view to making available to the Investor and Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144(c)(1) or any similar or analogous rule promulgated under the Securities Act, at all times after the Signing Date;

(ii) (A) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act, and (B) if at any time the Company is not required to file such reports, make available, upon the request of any Holder, such information necessary to permit sales pursuant to Rule 144A (including the information required by Rule 144A(d)(4) under the Securities Act);

(iii) so long as the Investor or a Holder owns any Registrable Securities, furnish to the Investor or such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as the Investor or Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities to the public without registration; and

(iv) take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act.

(k) As used in this Section 4.5, the following terms shall have the following respective meanings:

(i) "*Holder*" means the Investor and any other holder of Registrable Securities to whom the registration rights conferred by this Agreement have been transferred in compliance with Section 4.5(h) hereof.

(ii) "*Holders' Counsel*" means one counsel for the selling Holders chosen by Holders holding a majority interest in the Registrable Securities being registered.

(iii) "*Register*," "*registered*," and "*registration*" shall refer to a registration effected by preparing and (A) filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement or (B) filing a prospectus and/or

prospectus supplement in respect of an appropriate effective registration statement on Form S-3.

(iv) "*Registrable Securities*" means (A) all Preferred Shares, (B) the Warrant (subject to Section 4.5(p)) and (C) any equity securities issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clauses (A) or (B) by way of conversion, exercise or exchange thereof, including the Warrant Shares, or share dividend or share split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization, *provided* that, once issued, such securities will not be Registrable Securities when (1) they are sold pursuant to an effective registration statement under the Securities Act, (2) except as provided below in Section 4.5(o), they may be sold pursuant to Rule 144 without limitation thereunder on volume or manner of sale, (3) they shall have ceased to be outstanding or (4) they have been sold in a private transaction in which the transferor's rights under this Agreement are not assigned to the transferee of the securities. No Registrable Securities may be registered under more than one registration statement at any one time.

(v) "*Registration Expenses*" mean all expenses incurred by the Company in effecting any registration pursuant to this Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Section 4.5, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, expenses incurred in connection with any "road show", the reasonable fees and disbursements of Holders' Counsel, and expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

(vi) "*Rule 144*", "*Rule 144A*", "*Rule 159A*", "*Rule 405*" and "*Rule 415*" mean, in each case, such rule promulgated under the Securities Act (or any successor provision), as the same shall be amended from time to time.

(vii) "*Selling Expenses*" mean all discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of Holders' Counsel included in Registration Expenses).

(l) At any time, any holder of Securities (including any Holder) may elect to forfeit its rights set forth in this Section 4.5 from that date forward; *provided*, that a Holder forfeiting such rights shall nonetheless be entitled to participate under Section 4.5(a)(iv) – (vi) in any Pending Underwritten Offering to the same extent that such Holder would have been entitled to if the holder had not withdrawn; and *provided, further*, that no such forfeiture shall terminate a Holder's rights or obligations under Section 4.5(f) with respect to any prior registration or Pending Underwritten Offering. "*Pending Underwritten Offering*" means, with respect to any Holder forfeiting its rights pursuant to this Section 4.5(l), any underwritten offering of

Registrable Securities in which such Holder has advised the Company of its intent to register its Registrable Securities either pursuant to Section 4.5(a)(ii) or 4.5(a)(iv) prior to the date of such Holder's forfeiture.

(m) Specific Performance. The parties hereto acknowledge that there would be no adequate remedy at law if the Company fails to perform any of its obligations under this Section 4.5 and that the Investor and the Holders from time to time may be irreparably harmed by any such failure, and accordingly agree that the Investor and such Holders, in addition to any other remedy to which they may be entitled at law or in equity, to the fullest extent permitted and enforceable under applicable law shall be entitled to compel specific performance of the obligations of the Company under this Section 4.5 in accordance with the terms and conditions of this Section 4.5.

(n) No Inconsistent Agreements. The Company shall not, on or after the Signing Date, enter into any agreement with respect to its securities that may impair the rights granted to the Investor and the Holders under this Section 4.5 or that otherwise conflicts with the provisions hereof in any manner that may impair the rights granted to the Investor and the Holders under this Section 4.5. In the event the Company has, prior to the Signing Date, entered into any agreement with respect to its securities that is inconsistent with the rights granted to the Investor and the Holders under this Section 4.5 (including agreements that are inconsistent with the order of priority contemplated by Section 4.5(a)(vi)) or that may otherwise conflict with the provisions hereof, the Company shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Section 4.5.

(o) Certain Offerings by the Investor. In the case of any securities held by the Investor that cease to be Registrable Securities solely by reason of clause (2) in the definition of "Registrable Securities," the provisions of Sections 4.5(a)(ii), clauses (iv), (ix) and (x)-(xii) of Section 4.5(c), Section 4.5(g) and Section 4.5(i) shall continue to apply until such securities otherwise cease to be Registrable Securities. In any such case, an "underwritten" offering or other disposition shall include any distribution of such securities on behalf of the Investor by one or more broker-dealers, an "underwriting agreement" shall include any purchase agreement entered into by such broker-dealers, and any "registration statement" or "prospectus" shall include any offering document approved by the Company and used in connection with such distribution.

(p) Registered Sales of the Warrant. The Holders agree to sell the Warrant or any portion thereof under the Shelf Registration Statement only beginning 30 days after notifying the Company of any such sale, during which 30-day period the Investor and all Holders of the Warrant shall take reasonable steps to agree to revisions to the Warrant to permit a public distribution of the Warrant, including entering into a warrant agreement and appointing a warrant agent.

4.6 Voting of Warrant Shares. Notwithstanding anything in this Agreement to the contrary, the Investor shall not exercise any voting rights with respect to the Warrant Shares.

4.7 Depository Shares. Upon request by the Investor at any time following the Closing Date, the Company shall promptly enter into a depository arrangement, pursuant to customary agreements reasonably satisfactory to the Investor and with a depository reasonably acceptable to the Investor, pursuant to which the Preferred Shares may be deposited and depository shares, each representing a fraction of a Preferred Share as specified by the Investor, may be issued. From and after the execution of any such depository arrangement, and the deposit of any Preferred Shares pursuant thereto, the depository shares issued pursuant thereto shall be deemed "Preferred Shares" and, as applicable, "Registrable Securities" for purposes of this Agreement.

4.8 Restriction on Dividends and Repurchases.

(a) Prior to the earlier of (x) the third anniversary of the Closing Date and (y) the date on which the Preferred Shares have been redeemed in whole or the Investor has transferred all of the Preferred Shares to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor:

(i) declare or pay any dividend or make any distribution on the Common Stock (other than (A) regular quarterly cash dividends of not more than the amount of the last quarterly cash dividend per share declared or, if lower, publicly announced an intention to declare, on the Common Stock prior to October 14, 2008, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction, (B) dividends payable solely in shares of Common Stock and (C) dividends or distributions of rights or Junior Stock in connection with a stockholders' rights plan); or

(ii) redeem, purchase or acquire any shares of Common Stock or other capital stock or other equity securities of any kind of the Company, or any trust preferred securities issued by the Company or any Affiliate of the Company, other than (A) redemptions, purchases or other acquisitions of the Preferred Shares, (B) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock, in each case in this clause (B) 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, (C) purchases or other acquisitions by a broker-dealer subsidiary of the Company 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, (D) purchases by a broker-dealer subsidiary of the Company of capital stock of the Company for resale pursuant to an offering by the Company of such capital stock underwritten by such broker-dealer subsidiary, (E) any redemption or repurchase of rights pursuant to any stockholders' rights plan, (F) the acquisition by the Company or any of the Company Subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Company or any other Company Subsidiary), including as trustees or custodians, and (G) the exchange or conversion of Junior Stock for or into

other Junior Stock or of Parity Stock or trust preferred securities for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case set forth in this clause (G), 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 (clauses (C) and (F), collectively, the "Permitted Repurchases"). "Share Dilution Amount" means the increase in the number of diluted shares outstanding (determined in accordance with GAAP, and as measured from the date of the Company's most recently filed Company Financial Statements prior to the Closing 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.

(b) Until such time as the Investor ceases to own any Preferred Shares, the Company shall not repurchase any Preferred Shares from any holder thereof, whether by means of open market purchase, negotiated transaction, or otherwise, other than Permitted Repurchases, unless it offers to repurchase a ratable portion of the Preferred Shares then held by the Investor on the same terms and conditions.

(c) "Junior Stock" means Common Stock and any other class or series of stock of the Company the terms of which expressly provide that it ranks junior to the Preferred Shares as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company. "Parity Stock" means any class or series of stock of the Company the terms of which do not expressly provide that such class or series will rank senior or junior to the Preferred Shares as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

4.9 Repurchase of Investor Securities.

(a) Following the redemption in whole of the Preferred Shares held by the Investor or the Transfer by the Investor of all of the Preferred Shares to one or more third parties not affiliated with the Investor, the Company may repurchase, in whole or in part, at any time any other equity securities of the Company purchased by the Investor pursuant to this Agreement or the Warrant and then held by the Investor, upon notice given as provided in clause (b) below, at the Fair Market Value of the equity security.

(b) Notice of every repurchase of equity securities of the Company held by the Investor shall be given at the address and in the manner set forth for such party in Section 5.6. Each notice of repurchase given to the Investor shall state: (i) the number and type of securities to be repurchased, (ii) the Board of Director's determination of Fair Market Value of such securities and (iii) the place or places where certificates representing such securities are to be surrendered for payment of the repurchase price. The repurchase of the securities specified in the notice shall occur as soon as practicable following the determination of the Fair Market Value of the securities.

(c) As used in this Section 4.9, the following terms shall have the following respective meanings:

(i) "*Appraisal Procedure*" means a procedure whereby two independent appraisers, one chosen by the Company and one by the Investor, shall mutually agree upon the Fair Market Value. Each party shall deliver a notice to the other appointing its appraiser within 10 days after the Appraisal Procedure is invoked. If within 30 days after appointment of the two appraisers they are unable to agree upon the Fair Market Value, a third independent appraiser shall be chosen within 10 days thereafter by the mutual consent of such first two appraisers. The decision of the third appraiser so appointed and chosen shall be given within 30 days after the selection of such third appraiser. If three appraisers shall be appointed and the determination of one appraiser is disparate from the middle determination by more than twice the amount by which the other determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive upon the Company and the Investor; otherwise, the average of all three determinations shall be binding upon the Company and the Investor. The costs of conducting any Appraisal Procedure shall be borne by the Company.

(ii) "*Fair Market Value*" means, with respect to any security, the fair market value of such security as determined by the Board of Directors, acting in good faith in reliance on an opinion of a nationally recognized independent investment banking firm retained by the Company for this purpose and certified in a resolution to the Investor. If the Investor does not agree with the Board of Director's determination, it may object in writing within 10 days of receipt of the Board of Director's determination. In the event of such an objection, an authorized representative of the Investor and the chief executive officer of the Company shall promptly meet to resolve the objection and to agree upon the Fair Market Value. If the chief executive officer and the authorized representative are unable to agree on the Fair Market Value during the 10-day period following the delivery of the Investor's objection, the Appraisal Procedure may be invoked by either party to determine the Fair Market Value by delivery of a written notification thereof not later than the 30th day after delivery of the Investor's objection.

4.10 Executive Compensation. Until such time as the Investor ceases to own any debt or equity securities of the Company acquired pursuant to this Agreement or the Warrant, the Company shall take all necessary action to ensure that its Benefit Plans with respect to its Senior Executive Officers comply in all respects with Section 111(b) of the EESA as implemented by any guidance or regulation thereunder that has been issued and is in effect as of the Closing Date, and shall not adopt any new Benefit Plan with respect to its Senior Executive Officers that does not comply therewith. "*Senior Executive Officers*" means the Company's "senior executive officers" as defined in subsection 111(b)(3) of the EESA and regulations issued thereunder, including the rules set forth in 31 C.F.R. Part 30.

Article V
Miscellaneous

5.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by either the Investor or the Company if the Closing shall not have occurred by the 30th calendar day following the Signing Date; *provided, however*, that in the event the Closing has not occurred by such 30th calendar day, the parties will consult in good faith to determine whether to extend the term of this Agreement, it being understood that the parties shall be required to consult only until the fifth day after such 30th calendar day and not be under any obligation to extend the term of this Agreement thereafter; *provided, further*, that the right to terminate this Agreement under this Section 5.1(a) shall not be available to any party whose breach of any representation or warranty or failure to perform any obligation under this Agreement shall have caused or resulted in the failure of the Closing to occur on or prior to such date; or

(b) by either the Investor or the Company in the event that any Governmental Entity shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(c) by the mutual written consent of the Investor and the Company.

In the event of termination of this Agreement as provided in this Section 5.1, this Agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this Agreement.

5.2 Survival of Representations and Warranties. All covenants and agreements, other than those which by their terms apply in whole or in part after the Closing, shall terminate as of the Closing. The representations and warranties of the Company made herein or in any certificates delivered in connection with the Closing shall survive the Closing without limitation.

5.3 Amendment. No amendment of any provision of this Agreement will be effective unless made in writing and signed by an officer or a duly authorized representative of each party; *provided* that the Investor may unilaterally amend any provision of this Agreement to the extent required to comply with any changes after the Signing Date in applicable federal statutes. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative of any rights or remedies provided by law.

5.4 Waiver of Conditions. The conditions to each party's obligation to consummate the Purchase are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver will be effective unless it is in a

writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver.

5.5 Governing Law: Submission to Jurisdiction, Etc. This Agreement will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the parties hereto agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia and the United States Court of Federal Claims for any and all actions, suits or proceedings arising out of or relating to this Agreement or the Warrant or the transactions contemplated hereby or thereby, and (b) that notice may be served upon (i) the Company at the address and in the manner set forth for notices to the Company in Section 5.6 and (ii) the Investor in accordance with federal law. To the extent permitted by applicable law, each of the parties hereto hereby unconditionally waives trial by jury in any legal action or proceeding relating to this Agreement or the Warrant or the transactions contemplated hereby or thereby.

5.6 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices to the Company shall be delivered as set forth in Schedule A, or pursuant to such other instruction as may be designated in writing by the Company to the Investor. All notices to the Investor shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Investor to the Company.

If to the Investor:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 2312
Washington, D.C. 20220
Attention: Assistant General Counsel (Banking and Finance)
Facsimile: (202) 622-1974

5.7 Definitions

(a) When a reference is made in this Agreement to a subsidiary of a person, the term "*subsidiary*" means any corporation, partnership, joint venture, limited liability company or other entity (x) of which such person or a subsidiary of such person is a general partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such person and/or one or more subsidiaries thereof.

(b) The term "*Affiliate*" means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlled by*" and "*under common control with*") when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such person, whether through the ownership of voting securities by contract or otherwise.

(c) The terms "*knowledge of the Company*" or "*Company's knowledge*" mean the actual knowledge after reasonable and due inquiry of the "*officers*" (as such term is defined in Rule 3b-2 under the Exchange Act, but excluding any Vice President or Secretary) of the Company.

5.8 Assignment. Neither this Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except (a) an assignment, in the case of a Business Combination where such party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such Business Combination or the purchaser in such sale and (b) as provided in Section 4.5.

5.9 Severability. If any provision of this Agreement or the Warrant, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

5.10 No Third Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the Company and the Investor any benefit, right or remedies, except that the provisions of Section 4.5 shall inure to the benefit of the persons referred to in that Section.

* * *

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ANNEX A

CERTIFICATE OF DESIGNATIONS
OF
FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES [●]
OF
[●]

[*Insert name of Corporation*], a [corporation] organized and existing under the laws of the [*Insert jurisdiction of organization*] (the "Corporation"), in accordance with the provisions of Section[s] [●] of the [*Insert applicable statute*] 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 [●] creating a series of [●] shares of Preferred Stock of the Corporation designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series [●]".

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 \$[●] 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 [●]" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be [●].

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 \$[●] 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, [*Insert titles of any existing Junior 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 \$[1,000]¹ per share of Designated Preferred Stock.

(e) "Minimum Amount" means \$[Insert \$ amount equal to 25% of the aggregate value of the Designated Preferred Stock issued on the Original Issue Date].

(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 [Insert title(s) of existing classes or series of Parity Stock].

(g) "Signing Date" means [Insert date of applicable securities purchase agreement].

Part 4. Certain Voting Matters. [To be inserted if the Charter provides for voting in proportion to liquidation preferences: Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Designated Preferred Stock and any Voting Parity Stock has been cast or given on any matter on which the holders of shares of Designated Preferred Stock 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 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. For purposes of determining the voting rights of the holders of Designated Preferred Stock under Section 7 of the Standard Provisions forming part of this Certificate of Designations, each holder will be entitled to one vote for each \$1,000 of liquidation preference to which such holder's shares are entitled.] [To be inserted if the Charter does not provide for voting in proportion to liquidation preferences: 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]

¹ If issuer desires to issue shares with a higher dollar amount liquidation preference, liquidation preference references will be modified accordingly. In such case (in accordance with Section 4.7 of the Securities Purchase Agreement), the issuer will be required to enter into a deposit agreement.

IN WITNESS WHEREOF, *[Insert name of Corporation]* has caused this Certificate of Designations to be signed by {•
}, its [•], this [•] day of [•].

[Insert name of Corporation]

By: _____
Name:
Title:

ANNEX A

STANDARD PROVISIONS

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

(a) "Applicable Dividend Rate" means (i) during the period from the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 5% per annum and (ii) from and after the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 9% per annum.

(b) "Appropriate Federal Banking Agency" means the "appropriate Federal banking agency" with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(c) "Business Combination" means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Corporation's stockholders.

(d) "Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(e) "Bylaws" means the bylaws of the Corporation, as they may be amended from time to time.

(f) "Certificate of Designations" means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(g) "Charter" means the Corporation's certificate or articles of incorporation, articles of association, or similar organizational document.

(h) "Dividend Period" has the meaning set forth in Section 3(a).

(i) "Dividend Record Date" has the meaning set forth in Section 3(a).

(j) "Liquidation Preference" has the meaning set forth in Section 4(a).

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(k) "Original Issue Date" means the date on which shares of Designated Preferred Stock are first issued.

(l) "Preferred Director" has the meaning set forth in Section 7(b).

(m) "Preferred Stock" means any and all series of preferred stock of the Corporation, including the Designated Preferred Stock.

(n) "Qualified Equity Offering" means the sale and issuance for cash by the Corporation to persons other than the Corporation or any of its subsidiaries after the Original Issue Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier 1 capital of the Corporation at the time of issuance under the applicable risk-based capital guidelines of the Corporation's Appropriate Federal Banking Agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008).

(o) "Share Dilution Amount" has the meaning set forth in Section 3(b).

(p) "Standard Provisions" mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(q) "Successor Preferred Stock" has the meaning set forth in Section 5(a).

(r) "Voting Parity Stock" means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but

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.

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(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the "Liquidation Preference").

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 4, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

Section 5. Redemption.

(a) Optional Redemption. Except as provided below, the Designated Preferred Stock may not be redeemed prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date. On or after the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as

provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption.

Notwithstanding the foregoing, prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; *provided* that (x) the Corporation (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Minimum Amount (plus the "Minimum Amount" as defined in the relevant certificate of designations for each other outstanding series of preferred stock of such successor that was originally issued to the United States Department of the Treasury (the "Successor Preferred Stock") in connection with the Troubled Asset Relief Program Capital Purchase Program) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor), and (y) the aggregate redemption price of the Designated Preferred Stock (and any Successor Preferred Stock) redeemed pursuant to this paragraph may not exceed the aggregate net cash proceeds received by the Corporation (or any successor by Business Combination) from such Qualified Equity Offerings (including Qualified Equity Offerings of such successor).

The redemption price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Corporation or any other similar facility, notice of

redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

(f) Status of Redeemed Shares. Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

Section 6. Conversion. Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) **Preferred Stock Directors.** Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased by two and the holders of the Designated Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at the Corporation's next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to revesting in the event of each and every subsequent default of the character above mentioned; *provided* that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Corporation to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Corporation may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(c) **Class Voting Rights as to Particular Matters.** So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 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.

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.

ANNEX B

FORM OF WAIVER

In consideration for the benefits I will receive as a result of my employer's participation in the United States Department of the Treasury's TARP Capital Purchase Program, I hereby voluntarily waive any claim against the United States or my employer for any changes to my compensation or benefits that are required to comply with the regulation issued by the Department of the Treasury as published in the Federal Register on October 20, 2008.

I acknowledge that this regulation may require modification of the compensation, bonus, incentive and other benefit plans, arrangements, policies and agreements (including so-called "golden parachute" agreements) that I have with my employer or in which I participate as they relate to the period the United States holds any equity or debt securities of my employer acquired through the TARP Capital Purchase Program.

This waiver includes all claims I may have under the laws of the United States or any state related to the requirements imposed by the aforementioned regulation, including without limitation a claim for any compensation or other payments I would otherwise receive, any challenge to the process by which this regulation was adopted and any tort or constitutional claim about the effect of these regulations on my employment relationship.

ANNEX C**FORM OF OPINION**

(a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation.

(b) The Preferred Shares have been duly and validly authorized, and, when issued and delivered pursuant to the Agreement, the Preferred Shares will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock issued on the Closing Date with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(c) The Warrant has been duly authorized and, when executed and delivered as contemplated hereby, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) The shares of Common Stock issuable upon exercise of the Warrant have been duly authorized and reserved for issuance upon exercise of the Warrant and when so issued in accordance with the terms of the Warrant will be validly issued, fully paid and non-assessable [*insert, if applicable:* , subject to the approvals of the Company's stockholders set forth on Schedule C].

(e) The Company has the corporate power and authority to execute and deliver the Agreement and the Warrant and [*insert, if applicable:* , subject to the approvals of the Company's stockholders set forth on Schedule C.] to carry out its obligations thereunder (which includes the issuance of the Preferred Shares, Warrant and Warrant Shares).

(f) The execution, delivery and performance by the Company of the Agreement and the Warrant and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company [*insert, if applicable:* , subject, in each case, to the approvals of the Company's stockholders set forth on Schedule C].

(g) The Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity; *provided, however*, such counsel need express no opinion with respect to Section 4.5(g) or the severability provisions of the Agreement insofar as Section 4.5(g) is concerned.

ANNEX D

FORM OF WARRANT TO PURCHASE COMMON STOCK

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.

WARRANT
to purchase

Shares of Common Stock

of _____

Issue Date: _____

1. **Definitions.** Unless the context otherwise requires, when used herein the following terms shall have the meanings indicated.

“*Affiliate*” has the meaning ascribed to it in the Purchase Agreement.

“*Appraisal Procedure*” means a procedure whereby two independent appraisers, one chosen by the Company and one by the Original Warrantholder, shall mutually agree upon the determinations then the subject of appraisal. Each party shall deliver a notice to the other appointing its appraiser within 15 days after the Appraisal Procedure is invoked. If within 30 days after appointment of the two appraisers they are unable to agree upon the amount in question, a third independent appraiser shall be chosen within 10 days thereafter by the mutual consent of such first two appraisers. The decision of the third appraiser so appointed and chosen shall be given within 30 days after the selection of such third appraiser. If three appraisers shall be appointed and the determination of one appraiser is disparate from the middle determination by more than twice the amount by which the other determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive upon the

Company and the Original Warrantholder; otherwise, the average of all three determinations shall be binding upon the Company and the Original Warrantholder. The costs of conducting any Appraisal Procedure shall be borne by the Company.

"Board of Directors" means the board of directors of the Company, including any duly authorized committee thereof.

"Business Combination" means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company's stockholders.

"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.

"Capital Stock" means (A) with respect to any Person that is a corporation or company, any and all shares, interests, participations or other equivalents (however designated) of capital or capital stock of such Person and (B) with respect to any Person that is not a corporation or company, any and all partnership or other equity interests of such Person.

"Charter" means, with respect to any Person, its certificate or articles of incorporation, articles of association, or similar organizational document.

"Common Stock" has the meaning ascribed to it in the Purchase Agreement.

"Company" means the Person whose name, corporate or other organizational form and jurisdiction of organization is set forth in Item 1 of Schedule A hereto.

"conversion" has the meaning set forth in Section 13(B).

"convertible securities" has the meaning set forth in Section 13(B).

"CPP" has the meaning ascribed to it in the Purchase Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Exercise Price" means the amount set forth in Item 2 of Schedule A hereto.

"Expiration Time" has the meaning set forth in Section 3.

"Fair Market Value" means, with respect to any security or other property, the fair market value of such security or other property as determined by the Board of Directors, acting in good faith or, with respect to Section 14, as determined by the Original Warrantholder acting in good faith. For so long as the Original Warrantholder holds this Warrant or any portion thereof, it may object in writing to the Board of Director's calculation of fair market value within 10 days of receipt of written notice thereof. If the Original Warrantholder and the Company are unable to agree on fair market value during the 10-day period following the delivery of the Original Warrantholder's objection, the Appraisal Procedure may be invoked by either party to

determine Fair Market Value by delivering written notification thereof not later than the 30th day after delivery of the Original Warrantholder's objection.

"Governmental Entities" has the meaning ascribed to it in the Purchase Agreement.

"Initial Number" has the meaning set forth in Section 13(B).

"Issue Date" means the date set forth in Item 3 of Schedule A hereto.

"Market Price" means, with respect to a particular security, on any given day, the last reported sale price regular way or, in case no such reported sale takes place on such day, the average of the last closing bid and ask prices regular way, in either case on the principal national securities exchange on which the applicable securities are listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange, the average of the closing bid and ask prices as furnished by two members of the Financial Industry Regulatory Authority, Inc. selected from time to time by the Company for that purpose. "Market Price" shall be determined without reference to after hours or extended hours trading. If such security is not listed and traded in a manner that the quotations referred to above are available for the period required hereunder, the Market Price per share of Common Stock shall be deemed to be (i) in the event that any portion of the Warrant is held by the Original Warrantholder, the fair market value per share of such security as determined in good faith by the Original Warrantholder or (ii) in all other circumstances, the fair market value per share of such security as determined in good faith by the Board of Directors in reliance on an opinion of a nationally recognized independent investment banking corporation retained by the Company for this purpose and certified in a resolution to the Warrantholder. For the purposes of determining the Market Price of the Common Stock on the "trading day" preceding, on or following the occurrence of an event, (i) that trading day shall be deemed to commence immediately after the regular scheduled closing time of trading on the New York Stock Exchange or, if trading is closed at an earlier time, such earlier time and (ii) that trading day shall end at the next regular scheduled closing time, or if trading is closed at an earlier time, such earlier time (for the avoidance of doubt, and as an example, if the Market Price is to be determined as of the last trading day preceding a specified event and the closing time of trading on a particular day is 4:00 p.m. and the specified event occurs at 5:00 p.m. on that day, the Market Price would be determined by reference to such 4:00 p.m. closing price).

"Ordinary Cash Dividends" means a regular quarterly cash dividend on shares of Common Stock out of surplus or net profits legally available therefor (determined in accordance with generally accepted accounting principles in effect from time to time), *provided* that Ordinary Cash Dividends shall not include any cash dividends paid subsequent to the Issue Date to the extent the aggregate per share dividends paid on the outstanding Common Stock in any quarter exceed the amount set forth in Item 4 of Schedule A hereto, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

"Original Warrantholder" means the United States Department of the Treasury. Any actions specified to be taken by the Original Warrantholder hereunder may only be taken by such Person and not by any other Warrantholder.

“*Permitted Transactions*” has the meaning set forth in Section 13(B).

“*Person*” has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

“*Per Share Fair Market Value*” has the meaning set forth in Section 13(C).

“*Preferred Shares*” means the perpetual preferred stock issued to the Original Warrantholder on the Issue Date pursuant to the Purchase Agreement.

“*Pro Rata Repurchases*” means any purchase of shares of Common Stock by the Company or any Affiliate thereof pursuant to (A) any tender offer or exchange offer subject to Section 13(e) or 14(e) of the Exchange Act or Regulation 14E promulgated thereunder or (B) any other offer available to substantially all holders of Common Stock, in the case of both (A) or (B), whether for cash, shares of Capital Stock of the Company, other securities of the Company, evidences of indebtedness of the Company or any other Person or any other property (including, without limitation, shares of Capital Stock, other securities or evidences of indebtedness of a subsidiary), or any combination thereof, effected while this Warrant is outstanding. The “*Effective Date*” of a Pro Rata Repurchase shall mean the date of acceptance of shares for purchase or exchange by the Company under any tender or exchange offer which is a Pro Rata Repurchase or the date of purchase with respect to any Pro Rata Repurchase that is not a tender or exchange offer.

“*Purchase Agreement*” means the Securities Purchase Agreement – Standard Terms incorporated into the Letter Agreement, dated as of the date set forth in Item 5 of Schedule A hereto, as amended from time to time, between the Company and the United States Department of the Treasury (the “*Letter Agreement*”), including all annexes and schedules thereto.

“*Qualified Equity Offering*” has the meaning ascribed to it in the Purchase Agreement.

“*Regulatory Approvals*” with respect to the Warrantholder, means, to the extent applicable and required to permit the Warrantholder to exercise this Warrant for shares of Common Stock and to own such Common Stock without the Warrantholder being in violation of applicable law, rule or regulation, the receipt of any necessary approvals and authorizations of, filings and registrations with, notifications to, or expiration or termination of any applicable waiting period under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Securities Act*” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Shares*” has the meaning set forth in Section 2.

“*trading day*” means (A) if the shares of Common Stock are not traded on any national or regional securities exchange or association or over-the-counter market, a business day or (B) if the shares of Common Stock are traded on any national or regional securities exchange or

association or over-the-counter market, a business day on which such relevant exchange or quotation system is scheduled to be open for business and on which the shares of Common Stock (i) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market for any period or periods aggregating one half hour or longer; and (ii) 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 shares of Common Stock.

“U.S. GAAP” means United States generally accepted accounting principles.

“Warrantholder” has the meaning set forth in Section 2.

“Warrant” means this Warrant, issued pursuant to the Purchase Agreement.

2. Number of Shares; Exercise Price. This certifies that, for value received, the United States Department of the Treasury or its permitted assigns (the “Warrantholder”) is entitled, upon the terms and subject to the conditions hereinafter set forth, to acquire from the Company, in whole or in part, after the receipt of all applicable Regulatory Approvals, if any, up to an aggregate of the number of fully paid and nonassessable shares of Common Stock set forth in Item 6 of Schedule A hereto, at a purchase price per share of Common Stock equal to the Exercise Price. The number of shares of Common Stock (the “Shares”) and the Exercise Price are subject to adjustment as provided herein, and all references to “Common Stock,” “Shares” and “Exercise Price” herein shall be deemed to include any such adjustment or series of adjustments.

3. Exercise of Warrant; Term. Subject to Section 2, to the extent permitted by applicable laws and regulations, the right to purchase the Shares represented by this Warrant is exercisable, in whole or in part by the Warrantholder, at any time or from time to time after the execution and delivery of this Warrant by the Company on the date hereof, but in no event later than 5:00 p.m., New York City time on the tenth anniversary of the Issue Date (the “Expiration Time”), by (A) the surrender of this Warrant and Notice of Exercise annexed hereto, duly completed and executed on behalf of the Warrantholder, at the principal executive office of the Company located at the address set forth in Item 7 of Schedule A hereto (or such other office or agency of the Company in the United States as it may designate by notice in writing to the Warrantholder at the address of the Warrantholder appearing on the books of the Company), and (B) payment of the Exercise Price for the Shares thereby purchased:

(i) by having the Company withhold, from the shares of Common Stock that would otherwise be delivered to the Warrantholder upon such exercise, shares of Common stock issuable upon exercise of the Warrant equal in value to the aggregate Exercise Price as to which this Warrant is so exercised based on the Market Price of the Common Stock on the trading day on which this Warrant is exercised and the Notice of Exercise is delivered to the Company pursuant to this Section 3, or

(ii) with the consent of both the Company and the Warrantholder, by tendering in cash, by certified or cashier’s check payable to the order of the Company, or by wire transfer of immediately available funds to an account designated by the Company.

If the Warrantholder does not exercise this Warrant in its entirety, the Warrantholder will be entitled to receive from the Company within a reasonable time, and in any event not exceeding three business days, a new warrant in substantially identical form for the purchase of that number of Shares equal to the difference between the number of Shares subject to this Warrant and the number of Shares as to which this Warrant is so exercised. Notwithstanding anything in this Warrant to the contrary, the Warrantholder hereby acknowledges and agrees that its exercise of this Warrant for Shares is subject to the condition that the Warrantholder will have first received any applicable Regulatory Approvals.

4. Issuance of Shares; Authorization; Listing. Certificates for Shares issued upon exercise of this Warrant will be issued in such name or names as the Warrantholder may designate and will be delivered to such named Person or Persons within a reasonable time, not to exceed three business days after the date on which this Warrant has been duly exercised in accordance with the terms of this Warrant. The Company hereby represents and warrants that any Shares issued upon the exercise of this Warrant in accordance with the provisions of Section 3 will be duly and validly authorized and issued, fully paid and nonassessable and free from all taxes, liens and charges (other than liens or charges created by the Warrantholder, income and franchise taxes incurred in connection with the exercise of the Warrant or taxes in respect of any transfer occurring contemporaneously therewith). The Company agrees that the Shares so issued will be deemed to have been issued to the Warrantholder as of the close of business on the date on which this Warrant and payment of the Exercise Price are delivered to the Company in accordance with the terms of this Warrant, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Shares may not be actually delivered on such date. The Company will at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of providing for the exercise of this Warrant, the aggregate number of shares of Common Stock then issuable upon exercise of this Warrant at any time. The Company will (A) procure, at its sole expense, the listing of the Shares issuable upon exercise of this Warrant at any time, subject to issuance or notice of issuance, on all principal stock exchanges on which the Common Stock is then listed or traded and (B) maintain such listings of such Shares at all times after issuance. The Company will use reasonable best efforts to ensure that the Shares may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange on which the Shares are listed or traded.

5. No Fractional Shares or Scrip. No fractional Shares or scrip representing fractional Shares shall be issued upon any exercise of this Warrant. In lieu of any fractional Share to which the Warrantholder would otherwise be entitled, the Warrantholder shall be entitled to receive a cash payment equal to the Market Price of the Common Stock on the last trading day preceding the date of exercise less the pro-rated Exercise Price for such fractional share.

6. No Rights as Stockholders; Transfer Books. This Warrant does not entitle the Warrantholder to any voting rights or other rights as a stockholder of the Company prior to the date of exercise hereof. The Company will at no time close its transfer books against transfer of this Warrant in any manner which interferes with the timely exercise of this Warrant.

7. Charges, Taxes and Expenses. Issuance of certificates for Shares to the Warrantholder upon the exercise of this Warrant shall be made without charge to the Warrantholder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company.

8. Transfer/Assignment.

(A) Subject to compliance with clause (B) of this Section 8, this Warrant and all rights hereunder are transferable, in whole or in part, upon the books of the Company by the registered holder hereof in person or by duly authorized attorney, and a new warrant shall be made and delivered by the Company, of the same tenor and date as this Warrant but registered in the name of one or more transferees, upon surrender of this Warrant, duly endorsed, to the office or agency of the Company described in Section 3. All expenses (other than stock transfer taxes) and other charges payable in connection with the preparation, execution and delivery of the new warrants pursuant to this Section 8 shall be paid by the Company.

(B) The transfer of the Warrant and the Shares issued upon exercise of the Warrant are subject to the restrictions set forth in Section 4.4 of the Purchase Agreement. If and for so long as required by the Purchase Agreement, this Warrant shall contain the legends as set forth in Sections 4.2(a) and 4.2(b) of the Purchase Agreement.

9. Exchange and Registry of Warrant. This Warrant is exchangeable, upon the surrender hereof by the Warrantholder to the Company, for a new warrant or warrants of like tenor and representing the right to purchase the same aggregate number of Shares. The Company shall maintain a registry showing the name and address of the Warrantholder as the registered holder of this Warrant. This Warrant may be surrendered for exchange or exercise in accordance with its terms, at the office of the Company, and the Company shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

10. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and in the case of any such loss, theft or destruction, upon receipt of a bond, indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company shall make and deliver, in lieu of such lost, stolen, destroyed or mutilated Warrant, a new Warrant of like tenor and representing the right to purchase the same aggregate number of Shares as provided for in such lost, stolen, destroyed or mutilated Warrant.

11. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a business day, then such action may be taken or such right may be exercised on the next succeeding day that is a business day.

12. Rule 144 Information. The Company covenants that it will use its reasonable best efforts to timely file all reports and other documents required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations promulgated by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any

Warrantholder, make publicly available such information as necessary to permit sales pursuant to Rule 144 under the Securities Act), and it will use reasonable best efforts to take such further action as any Warrantholder may reasonably request, in each case to the extent required from time to time to enable such holder to, if permitted by the terms of this Warrant and the Purchase Agreement, sell this Warrant without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144 under the Securities Act, as such rule may be amended from time to time, or (B) any successor rule or regulation hereafter adopted by the SEC. Upon the written request of any Warrantholder, the Company will deliver to such Warrantholder a written statement that it has complied with such requirements.

13. Adjustments and Other Rights. The Exercise Price and the number of Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as follows; *provided*, that if more than one subsection of this Section 13 is applicable to a single event, the subsection shall be applied that produces the largest adjustment and no single event shall cause an adjustment under more than one subsection of this Section 13 so as to result in duplication:

(A) Stock Splits, Subdivisions, Reclassifications or Combinations. If the Company shall (i) declare and pay a dividend or make a distribution on its Common Stock in shares of Common Stock, (ii) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (iii) combine or reclassify the outstanding shares of Common Stock into a smaller number of shares, the number of Shares issuable upon exercise of this Warrant at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the Warrantholder after such date shall be entitled to purchase the number of shares of Common Stock which such holder would have owned or been entitled to receive in respect of the shares of Common Stock subject to this Warrant after such date had this Warrant been exercised immediately prior to such date. In such event, the Exercise Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted to the number obtained by dividing (x) the product of (1) the number of Shares issuable upon the exercise of this Warrant before such adjustment and (2) the Exercise Price in effect immediately prior to the record or effective date, as the case may be, for the dividend, distribution, subdivision, combination or reclassification giving rise to this adjustment by (y) the new number of Shares issuable upon exercise of the Warrant determined pursuant to the immediately preceding sentence.

(B) Certain Issuances of Common Shares or Convertible Securities. Until the earlier of (i) the date on which the Original Warrantholder no longer holds this Warrant or any portion thereof and (ii) the third anniversary of the Issue Date, if the Company shall issue shares of Common Stock (or rights or warrants or other securities exercisable or convertible into or exchangeable (collectively, a "*conversion*") for shares of Common Stock) (collectively, "*convertible securities*") (other than in Permitted Transactions (as defined below) or a transaction to which subsection (A) of this Section 13 is applicable) without consideration or at a consideration per share (or having a conversion price per share) that is less than 90% of the Market Price on the last trading day preceding the date of the agreement on pricing such shares (or such convertible securities) then, in such event:

(A) the number of Shares issuable upon the exercise of this Warrant immediately prior to the date of the agreement on pricing of such shares (or of such convertible securities) (the "Initial Number") shall be increased to the number obtained by multiplying the Initial Number by a fraction (A) the numerator of which shall be the sum of (x) the number of shares of Common Stock of the Company outstanding on such date and (y) the number of additional shares of Common Stock issued (or into which convertible securities may be exercised or convert) and (B) the denominator of which shall be the sum of (I) the number of shares of Common Stock outstanding on such date and (II) the number of shares of Common Stock which the aggregate consideration receivable by the Company for the total number of shares of Common Stock so issued (or into which convertible securities may be exercised or convert) would purchase at the Market Price on the last trading day preceding the date of the agreement on pricing such shares (or such convertible securities); and

(B) the Exercise Price payable upon exercise of the Warrant shall be adjusted by multiplying such Exercise Price in effect immediately prior to the date of the agreement on pricing of such shares (or of such convertible securities) by a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon exercise of this Warrant prior to such date and the denominator of which shall be the number of shares of Common Stock issuable upon exercise of this Warrant immediately after the adjustment described in clause (A) above.

For purposes of the foregoing, the aggregate consideration receivable by the Company in connection with the issuance of such shares of Common Stock or convertible securities shall be deemed to be equal to the sum of the net offering price (including the Fair Market Value of any non-cash consideration and after deduction of any related expenses payable to third parties) of all such securities plus the minimum aggregate amount, if any, payable upon exercise or conversion of any such convertible securities into shares of Common Stock; and "Permitted Transactions" shall mean issuances (i) as consideration for or to fund the acquisition of businesses and/or related assets, (ii) in connection with employee benefit plans and compensation related arrangements in the ordinary course and consistent with past practice approved by the Board of Directors, (iii) in connection with a public or broadly marketed offering and sale of Common Stock or convertible securities for cash conducted by the Company or its affiliates pursuant to registration under the Securities Act or Rule 144A thereunder on a basis consistent with capital raising transactions by comparable financial institutions and (iv) in connection with the exercise of preemptive rights on terms existing as of the Issue Date. Any adjustment made pursuant to this Section 13(B) shall become effective immediately upon the date of such issuance.

(C) Other Distributions. In case the Company shall fix a record date for the making of a distribution to all holders of shares of its Common Stock of securities, evidences of indebtedness, assets, cash, rights or warrants (excluding Ordinary Cash Dividends, dividends of its Common Stock and other dividends or distributions referred to in Section 13(A)), in each such case, the Exercise Price in effect prior to such record date shall be reduced immediately thereafter to the price determined by multiplying the Exercise Price in effect immediately prior to the reduction by the quotient of (x) the Market Price of the Common Stock on the last trading day preceding the first date on which the Common Stock trades regular way on the principal

national securities exchange on which the Common Stock is listed or admitted to trading without the right to receive such distribution, minus the amount of cash and/or the Fair Market Value of the securities, evidences of indebtedness, assets, rights or warrants to be so distributed in respect of one share of Common Stock (such amount and/or Fair Market Value, the "Per Share Fair Market Value") divided by (y) such Market Price on such date specified in clause (x); such adjustment shall be made successively whenever such a record date is fixed. In such event, the number of Shares issuable upon the exercise of this Warrant shall be increased to the number obtained by dividing (x) the product of (1) the number of Shares issuable upon the exercise of this Warrant before such adjustment, and (2) the Exercise Price in effect immediately prior to the distribution giving rise to this adjustment by (y) the new Exercise Price determined in accordance with the immediately preceding sentence. In the case of adjustment for a cash dividend that is, or is coincident with, a regular quarterly cash dividend, the Per Share Fair Market Value would be reduced by the per share amount of the portion of the cash dividend that would constitute an Ordinary Cash Dividend. In the event that such distribution is not so made, the Exercise Price and the number of Shares issuable upon exercise of this Warrant then in effect shall be readjusted, effective as of the date when the Board of Directors determines not to distribute such shares, evidences of indebtedness, assets, rights, cash or warrants, as the case may be, to the Exercise Price that would then be in effect and the number of Shares that would then be issuable upon exercise of this Warrant if such record date had not been fixed.

(D) Certain Repurchases of Common Stock. In case the Company effects a Pro Rata Repurchase of Common Stock, then the Exercise Price shall be reduced to the price determined by multiplying the Exercise Price in effect immediately prior to the Effective Date of such Pro Rata Repurchase by a fraction of which the numerator shall be (i) the product of (x) the number of shares of Common Stock outstanding immediately before such Pro Rata Repurchase and (y) the Market Price of a share of Common Stock on the trading day immediately preceding the first public announcement by the Company or any of its Affiliates of the intent to effect such Pro Rata Repurchase, minus (ii) the aggregate purchase price of the Pro Rata Repurchase, and of which the denominator shall be the product of (i) the number of shares of Common Stock outstanding immediately prior to such Pro Rata Repurchase minus the number of shares of Common Stock so repurchased and (ii) the Market Price per share of Common Stock on the trading day immediately preceding the first public announcement by the Company or any of its Affiliates of the intent to effect such Pro Rata Repurchase. In such event, the number of shares of Common Stock issuable upon the exercise of this Warrant shall be increased to the number obtained by dividing (x) the product of (1) the number of Shares issuable upon the exercise of this Warrant before such adjustment, and (2) the Exercise Price in effect immediately prior to the Pro Rata Repurchase giving rise to this adjustment by (y) the new Exercise Price determined in accordance with the immediately preceding sentence. For the avoidance of doubt, no increase to the Exercise Price or decrease in the number of Shares issuable upon exercise of this Warrant shall be made pursuant to this Section 13 (D).

(E) Business Combinations. In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock referred to in Section 13(A)), the Warrantholder's right to receive Shares upon exercise of this Warrant shall be converted into the right to exercise this Warrant to acquire the number of shares of stock or other securities or property (including cash) which the Common Stock issuable (at the time of such Business Combination or reclassification) upon exercise of this Warrant immediately prior to such

Business Combination or reclassification would have been entitled to receive upon consummation of such Business Combination or reclassification; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the Warrantholder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to the Warrantholder's right to exercise this Warrant in exchange for any shares of stock or other securities or property pursuant to this paragraph. In determining the kind and amount of stock, securities or the property receivable upon exercise of this Warrant following the consummation of such Business Combination, if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such Business Combination, then the consideration that the Warrantholder shall be entitled to receive upon exercise shall be deemed to be the types and amounts of consideration received by the majority of all holders of the shares of common stock that affirmatively make an election (or of all such holders if none make an election).

(F) Rounding of Calculations; Minimum Adjustments. All calculations under this Section 13 shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Section 13 to the contrary notwithstanding, no adjustment in the Exercise Price or the number of Shares into which this Warrant is exercisable shall be made if the amount of such adjustment would be less than \$0.01 or one-tenth (1/10th) of a share of Common Stock, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or 1/10th of a share of Common Stock, or more.

(G) Timing of Issuance of Additional Common Stock Upon Certain Adjustments. In any case in which the provisions of this Section 13 shall require that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (i) issuing to the Warrantholder of this Warrant exercised after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such exercise by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such Warrantholder any amount of cash in lieu of a fractional share of Common Stock; *provided, however*, that the Company upon request shall deliver to such Warrantholder a due bill or other appropriate instrument evidencing such Warrantholder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

(H) Completion of Qualified Equity Offering. In the event the Company (or any successor by Business Combination) completes one or more Qualified Equity Offerings on or prior to December 31, 2009 that result in the Company (or any such successor) receiving aggregate gross proceeds of not less than 100% of the aggregate liquidation preference of the Preferred Shares (and any preferred stock issued by any such successor to the Original Warrantholder under the CPP), the number of shares of Common Stock underlying the portion of this Warrant then held by the Original Warrantholder shall be thereafter reduced by a number of shares of Common Stock equal to the product of (i) 0.5 and (ii) the number of shares underlying

the Warrant on the Issue Date (adjusted to take into account all other theretofore made adjustments pursuant to this Section 13).

(I) **Other Events.** For so long as the Original Warrantholder holds this Warrant or any portion thereof, if any event occurs as to which the provisions of this Section 13 are not strictly applicable or, if strictly applicable, would not, in the good faith judgment of the Board of Directors of the Company, fairly and adequately protect the purchase rights of the Warrants in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make such adjustments in the application of such provisions, in accordance with such essential intent and principles, as shall be reasonably necessary, in the good faith opinion of the Board of Directors, to protect such purchase rights as aforesaid. The Exercise Price or the number of Shares into which this Warrant is exercisable shall not be adjusted in the event of a change in the par value of the Common Stock or a change in the jurisdiction of incorporation of the Company.

(J) **Statement Regarding Adjustments.** Whenever the Exercise Price or the number of Shares into which this Warrant is exercisable shall be adjusted as provided in Section 13, the Company shall forthwith file at the principal office of the Company a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of Shares into which this Warrant shall be exercisable after such adjustment, and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each Warrantholder at the address appearing in the Company's records.

(K) **Notice of Adjustment Event.** In the event that the Company shall propose to take any action of the type described in this Section 13 (but only if the action of the type described in this Section 13 would result in an adjustment in the Exercise Price or the number of Shares into which this Warrant is exercisable or a change in the type of securities or property to be delivered upon exercise of this Warrant), the Company shall give notice to the Warrantholder, in the manner set forth in Section 13(J), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto as shall be reasonably necessary to indicate the effect on the Exercise Price and the number, kind or class of shares or other securities or property which shall be deliverable upon exercise of this Warrant. In the case of any action which would require the fixing of a record date, such notice shall be given at least 10 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 15 days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(L) **Proceedings Prior to Any Action Requiring Adjustment.** As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 13, the Company shall take any action which may be necessary, including obtaining regulatory, New York Stock Exchange or stockholder approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock that the Warrantholder is entitled to receive upon exercise of this Warrant pursuant to this Section 13.

(M) **Adjustment Rules.** Any adjustments pursuant to this Section 13 shall be made successively whenever an event referred to herein shall occur. If an adjustment in Exercise Price made hereunder would reduce the Exercise Price to an amount below par value of the Common Stock, then such adjustment in Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Stock.

14. **Exchange.** At any time following the date on which the shares of Common Stock of the Company are no longer listed or admitted to trading on a national securities exchange (other than in connection with any Business Combination), the Original Warrantholder may cause the Company to exchange all or a portion of this Warrant for an economic interest (to be determined by the Original Warrantholder after consultation with the Company) of the Company classified as permanent equity under U.S. GAAP having a value equal to the Fair Market Value of the portion of the Warrant so exchanged. The Original Warrantholder shall calculate any Fair Market Value required to be calculated pursuant to this Section 14, which shall not be subject to the Appraisal Procedure.

15. **No Impairment.** The Company will not, by amendment of its Charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder.

16. **Governing Law.** This Warrant will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the Company and the Warrantholder agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia for any action, suit or proceeding arising out of or relating to this Warrant or the transactions contemplated hereby, and (b) that notice may be served upon the Company at the address in Section 20 below and upon the Warrantholder at the address for the Warrantholder set forth in the registry maintained by the Company pursuant to Section 9 hereof. To the extent permitted by applicable law, each of the Company and the Warrantholder hereby unconditionally waives trial by jury in any legal action or proceeding relating to the Warrant or the transactions contemplated hereby or thereby.

17. **Binding Effect.** This Warrant shall be binding upon any successors or assigns of the Company.

18. **Amendments.** This Warrant may be amended and the observance of any term of this Warrant may be waived only with the written consent of the Company and the Warrantholder.

19. **Prohibited Actions.** The Company agrees that it will not take any action which would entitle the Warrantholder to an adjustment of the Exercise Price if the total number of shares of Common Stock issuable after such action upon exercise of this Warrant, together with

all shares of Common Stock then outstanding and all shares of Common Stock then issuable upon the exercise of all outstanding options, warrants, conversion and other rights, would exceed the total number of shares of Common Stock then authorized by its Charter.

20. Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices hereunder shall be delivered as set forth in Item 8 of Schedule A hereto, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

21. Entire Agreement. This Warrant, the forms attached hereto and Schedule A hereto (the terms of which are incorporated by reference herein), and the Letter Agreement (including all documents incorporated therein), contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous arrangements or undertakings with respect thereto.

[Remainder of page intentionally left blank]

[Form of Notice of Exercise]

Date: _____

TO: [Company]

RE: Election to Purchase Common Stock

The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby agrees to subscribe for and purchase the number of shares of the Common Stock set forth below covered by such Warrant. The undersigned, in accordance with Section 3 of the Warrant, hereby agrees to pay the aggregate Exercise Price for such shares of Common Stock in the manner set forth below. A new warrant evidencing the remaining shares of Common Stock covered by such Warrant, but not yet subscribed for and purchased, if any, should be issued in the name set forth below.

Number of Shares of Common Stock _____

Method of Payment of Exercise Price (note if cashless exercise pursuant to Section 3(i) of the Warrant or cash exercise pursuant to Section 3(ii) of the Warrant, with consent of the Company and the Warrantholder)

Aggregate Exercise Price: _____

Holder: _____

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by a duly authorized officer.

Dated: _____

COMPANY: _____

By: _____

Name:

Title:

Attest:

By: _____

Name:

Title:

[Signature Page to Warrant]

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SCHEDULE A

Item 1

Name:

Corporate or other organizational form:

Jurisdiction of organization:

Item 2

Exercise Price: ¹

Item 3

Issue Date:

Item 4

Amount of last dividend declared prior to the Issue Date:

Item 5

Date of Letter Agreement between the Company and the United States Department of the Treasury:

Item 6

Number of shares of Common Stock:

Item 7

Company's address:

Item 8

Notice information:

¹ Initial exercise price to be calculated based on the average of closing prices of the Common Stock on the 20 trading days ending on the last trading day prior to the date the Company's application for participation in the Capital Purchase Program was approved by the United States Department of the Treasury.

SCHEDULE A

ADDITIONAL TERMS AND CONDITIONS

Company Information:

Name of the Company:	Bank of America Corporation
Corporate or other organizational form:	Corporation
Jurisdiction of Organization:	Delaware
Appropriate Federal Banking Agency:	Board of Governors of the Federal Reserve System
Notice Information:	Bank of America Corporation Bank of America Corporate Center 100 North Tryon Street Charlotte, NC 28255 Attention: Timothy J. Mayopoulos Executive Vice President and General Counsel Facsimile: (704) 370-3515

Terms of the Purchase:

Series of Preferred Stock Purchased:	Fixed Rate Cumulative Perpetual Preferred Stock, Series N
Per Share Liquidation Preference of Preferred Stock:	\$25,000
Number of Shares of Preferred Stock Purchased:	600,000
Dividend Payment Dates on the Preferred Stock:	February 15, May 15, August 15, November 15
Number of Initial Warrant Shares:	73,075,674
Exercise Price of the Warrant:	\$30.79
Purchase Price:	\$15,000,000,000

Closing:

Location of Closing:	Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, NY 10017
Time of Closing:	9:00 a.m., New York time
Date of Closing:	October 28, 2008



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HUNTON & WILLIAMS LLP
BANK OF AMERICA PLAZA
SUITE 3500
101 SOUTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28280

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ANDREW A. GERBER.
DIRECT DIAL: 704-378-4718
EMAIL: agerber@hunton.com

FILE NO: 46123.74

January 8, 2009

Rule 14a-8

BY ELECTRONIC MAIL

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Supplemental Letter for Stockholder Proposals Submitted by the Indiana Laborers Pension Fund

Ladies and Gentlemen:

By letter dated December 23, 2008 (the "Initial Letter"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted several proposals (the "Proposals") submitted by the Indiana Laborers Pension Fund ("ILPF") from its proxy materials for the 2009 Annual Meeting for the reasons set forth therein. The Initial Letter is attached hereto as **Exhibit A**. The Proposals are attached hereto as **Exhibit B**.

As counsel to the Corporation, we hereby supplement the Initial Letter and request confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposals from its proxy materials for the 2009 Annual Meeting for the additional reason set forth herein. This letter is intended to supplement, but does not replace, the Initial Letter.

GENERAL

As stated in the Initial Letter, the 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

A copy of this letter is also being sent to the ILPF as notice of the Corporation's intention to omit the Proposals from the Corporation's proxy materials for the 2009 Annual Meeting.



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SUMMARY OF PROPOSALS

The Proposals urge that the Board of Directors and its compensation committee implement specified reforms to impose limitations on senior executive compensation and corporate governance.

ADDITIONAL REASON FOR EXCLUSION OF PROPOSALS

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or its supporting statement is contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits false and misleading statements in proxy soliciting materials, and Rule 14a-4, which requires information included in a proxy statement to be clearly presented. The Division has consistently taken the position that stockholder proposals that are vague and indefinite are inherently misleading and thus may be omitted from a company's proxy materials under Rule 14a-8(i)(3). Staff Legal Bulletin No. 14B (September 15, 2004) provides that a stockholder proposal may be omitted under Rule 14a-8(i)(3) where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." The Division has consistently deemed a proposal to be impermissibly vague or indefinite where the proposal calls for the company to adopt, consider or abide by a standard or set of standards established by a third party without describing the substantive provisions of the standards or guidelines.

The Proposals are vague and indefinite because they do not include any disclosure regarding when the executive compensation limits they seek to establish expire. Absent any statement that these limits will be temporary, one must interpret the Proposals limits to apply indefinitely or permanently. The failure to disclose the permanence of these restrictions is likely to mislead the Corporation's stockholders regarding this material fact. Stockholders are likely to assume that the timeframe for implementation of the Proposal will be temporary because of the exigent and temporary nature of the Temporary Asset Relief Program ("TARP") referred to in the Proposals. This would be a reasonable (although mistaken) assumption by stockholders since certain of the executive compensation restrictions imposed on companies participating in TARP apply only for a limited period of time. Unlike the temporary nature of TARP, as explained above, the duration of the restrictions imposed by the Proposals is permanent. Previously, the Division found a proposal that did not state the duration of its requirements to be excludable as vague and indefinite. *See Wendy's International, Inc.* (February 24, 2006). Therefore, because the duration of a proposal's requirements is material, and because stockholders are likely to be misled by the ILPF's disclosure, the Proposals violate Rule 14a-9 and, therefore, Rule 14a-8(i)(3) authorizes the Corporation to exclude it.



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Recently, in *SunTrust Banks, Inc.* (December 31, 2008) ("*SunTrust*"), the Division found a substantially similar submission excludable under Rule 14a-8(i)(3) because it was vague and indefinite. In *SunTrust*, the submission urged that, in the event SunTrust chooses to participate in the TARP program "the board and its compensation committee implement specified reforms to impose limitations on senior executive compensation." In reaching its conclusion, the Division noted that the submission, "[b]y its terms . . . appears to impose no limitation on the duration of the specified reforms." A copy of the Division's response in *SunTrust* is attached hereto as **Exhibit C**.

The Proposals and the supporting statement are clearly tied to the Corporation's participation in the TARP program. However, as was the case in *SunTrust*, the Proposals submitted by the ILPF impose no limitation on the duration of the specified reforms.

Accordingly, based on the forgoing and consistent with *SunTrust*, we believe that the Proposals may be excluded because it is vague and indefinite in violation of Rule 14a-8(i)(3).

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposals may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,

Andrew A. Gerber

cc: Teresa M. Brenner
ILPF

EXHIBIT A

See attached.



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December 23, 2008

Rule 14a-8

BY OVERNIGHT DELIVERY

Securities and Exchange Commission
 Office of Chief Counsel
 Division of Corporation Finance
 100 F Street, N.E.
 Washington, DC 20549

Re: Stockholder Proposal Submitted by the Indiana Laborers Pension Fund
 Stockholder Proposal Submitted by the American Federation of State, County &
 Municipal Employees
 Stockholder Proposal Submitted by Andrea Loyd Bell
 Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

Pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), we request confirmation that the Staff of the Division of Corporation Finance (the "Division") will not recommend enforcement action if the Corporation omits from its proxy materials for the Corporation's 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") the proposal described below for the reasons set forth herein. The statements of fact included herein represent our understanding of such facts.

GENERAL

The Corporation received: (i) several proposals and a supporting statement dated November 13, 2008 (the "ILPF Proposals") from the Indiana Laborers Pension Fund (the "ILPF"), (ii) a proposal and supporting statement dated November 17, 2008 (the "AFSCME Proposals") from the American Federation of State, County & Municipal Employees ("AFSCME"), (iii) a revised proposal and supporting statement dated December 2, 2008 (the "Bell Proposal") from Andrea Loyd Bell ("Bell") and (iv) a proposal and supporting statement dated November 24, 2008 (the "Schwartz Proposal") from Donald M. and Judith A. Schwartz ("Schwartz" and ILPF, AFSCME, Bell and Schwartz each a "Proponent") for inclusion in the proxy materials for the 2009 Annual

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Meeting. The ILPF Proposals, the AFSCME Proposal, the Bell Proposal and the Schwartz Proposal (collectively, the "Proposals") are attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D, respectively. The 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(j) promulgated under the Exchange Act, enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that it may exclude the Proposals; and
2. Six copies of the Proposals.

With respect to Section 3.B. below, this letter shall also serve as my opinion of counsel. I am licensed to practice law in the States of North Carolina and Maryland.

A copy of this letter is also being sent to each Proponent as notice of the Corporation's intent to omit the Proposals from the Corporation's proxy materials for the 2009 Annual Meeting.

SUMMARY OF THE PROPOSALS

The ILPF Proposals

The ILPF Proposals urge the Board of Directors and its compensation committee to implement the following "*set* of executive compensation *reforms* that impose important limitations on senior executive compensation" (emphasis added):

- limits on target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- a freeze on new stock option awards, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- adoption of an equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;

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- prohibition of accelerated vesting for all unvested equity awards;
- limits on all severance payments to an amount no greater than one times annual salary; and
- a freeze on the accrual of retirement benefits under any supplemental executive retirement plan.

The ILPF Proposals were received by the Corporation via certified mail on the morning of November 17, 2008.

The AFSCME Proposal

The AFSCME Proposal urges the Compensation and Benefits Committee of the Board of Directors (the "Committee") "to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCME Proposal further recommends that the Committee "not adopt a percentage lower than 75% of net after-tax shares." The AFSCME Proposal was received by the Corporation by facsimile on November 17, 2008 at 5:54 p.m. Eastern Standard Time.

The Bell Proposal

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

The Bell Proposal was originally received by the Corporation on November 18, 2008 and was subsequently revised on December 2, 2008.

The Schwartz Proposal

The Schwartz Proposal recommends “that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices.” These actions are to remain in place “until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.” The Schwartz Proposal was received by the Corporation on November 28, 2008.

REASONS FOR EXCLUSION OF PROPOSALS

1. **The ILPF Proposals**—The Corporation believes that the ILPF Proposals may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(c) because the ILPF has violated the one proposal limitation.
2. **The AFSCME Proposal**—In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the AFSCME Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the AFSCME Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation’s proxy materials for the 2009 Annual Meeting.
3. **The Bell Proposal**—The Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to (i) Rule 14a-8(b) and (f) because Bell has failed, upon timely request, to provide the required ownership information to establish eligibility to submit a proposal under Rule 14a-8 and (ii) Rule 14a-8(i)(13) because the Bell Proposal relates to a specific amount of dividends. In addition, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal. In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Bell Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation’s proxy materials for the 2009 Annual Meeting.
4. **The Schwartz Proposal**—The Corporation believes that the Schwartz Proposal may be excluded pursuant to (i) Rule 14a-8(i)(6) because the Corporation lacks the power and authority

to implement the Schwartz Proposal and (ii) Rule 14a-8(i)(13) because the Schwartz Proposal relates to a specific amount of dividends. In addition, in the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting. Finally, in the event that the Bell Proposal is not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the Bell Proposal) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.

1. Exclusion of the ILPF Proposals.

The ILPF Proposal consists of seven different proposals. Rule 14a-8(c) provides that each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. The Rule further provides that a stockholder may comply with the rule by reducing the number of proposals to one within 14 days from notification of the defect by the company. Notwithstanding the fact that the ILPF has framed its request in terms of one shareholder resolution, the ILPF Proposals submitted by the ILPF violate Rule 14a-8(c) because they consist of more than one proposal and, in fact, constitute as many as seven separate proposals. The ILPF Proposals were received by the Corporation on November 17, 2008. By letter dated November 19, 2008, the Corporation notified the ILPF that its submission violated Rule 14a-8(c) and requested that a revised proposal be submitted to the Corporation within 14 days of the ILPF's receipt of the letter. A copy of the November 19, 2008 letter is attached hereto as Exhibit E, and the evidence of the ILPF's receipt of such letter on November 25, 2008 is attached as Exhibit F. As of the date of this letter, the ILPF has failed to respond to the request.

The ILPF has acknowledged that the ILPF Proposals represent more than one request by requesting that the Corporation include the "set" of "reforms" and by setting forth the ILPF Proposals in seven separate bullet points. The Division has consistently taken the position that substantially distinct proposals may not be considered a single proposal for purposes of Rule 14a-8(c). See *Fotoball, Inc.* (May 6, 1997) (proposals relating to a minimum share ownership of directors, form of director compensation and business relationships between an issuer and its non-employee directors constitute multiple proposals) and *American Electric Power Company, Inc.* (January 2, 2001) (proposals relating to tenure, meetings and compensation of the board constitute multiple proposals). In certain circumstances, the Division has taken the position that multiple proposals will be deemed to constitute one proposal if they are related to a single, well-defined unifying concept. See *Securities Exchange Act Release No. 12999* (November 22,

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1976). Unlike the proposals set forth in *Computer Horizons Corp.* (April 1, 1993) (proposals unified by the concept of the elimination of takeover defenses), the ILPF Proposals represent more than a single, well defined unifying concept. As a result, the Corporation believes that it may exclude the ILPF Proposals in accordance with Rule 14a-8(f)(1) because of the ILPF's failure to comply with Rule 14a-8(c).

Although the ILPF Proposals are packaged as a "set of executive compensation reforms," they address multiple concepts that are not well defined, including both compensation matters and corporate governance matters. The ILPF Proposals seek to (1) limit target annual incentive compensation, (2) require that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, (3) freeze new stock option awards, (4) impose a 75% "hold-to-retirement" policy on shares of stock obtained through equity awards, (5) prohibit accelerated vesting for all unvested equity awards, (6) limit severance payments and (7) freeze accrual of retirement benefits under supplemental executive retirement plans. The Division has found that even "where the components [of a multi-part proposal] relate to some central topic, however, proposals that contemplate a variety of loosely related actions can be excluded for violating Rule 14a-8(c)." *General Motors Corporation* (April 9, 2007). See also, *Torotel, Inc.* (November 1, 2006) and *Compuware Corporation* (July 3, 2003). The component parts of the ILPF Proposals relate to a broad range of matters including compensation, bonuses, stock option grants, acceleration of equity awards, severance payments and retirement benefits. Permitting a proponent to submit any number of broad ranging proposals under the umbrella of executive compensation is contrary to Rule 14a-8 and the proxy rules generally.

Under the proxy rules, if the Corporation were presenting these seven proposals as a single proposal, the rules regarding the appropriateness of bundling voting items would be called into question. Rule 14a-5 requires that information included in a proxy statement must be "clearly presented" and the statements made shall be divided into groups according to subject matter. These seven proposals are each distinct in their application and require separate consideration by stockholders. In addition, implementation of these seven proposals will require separate and distinct actions by the Corporation.

Even if the Division cannot concur that the ILPF Proposal consists of seven different proposals, the ILPF Proposal clearly consists of more than one proposal. In the event that the Division does not concur that there are seven proposals identified above, the Corporation believes there is clearly more than one, and, accordingly, all the proposals would be excludable. See *Occidental Petroleum Corporation* (February 23, 1998) (the Division noting that "while it does not necessarily agree with the Company's assertion that the proposal contains five separate proposals, we believe that that the proposal does contain more than one proposal"). Even if the Division were to characterize the first six items listed above as relating to a single concept (i.e.,

executive compensation/pay for performance), the seventh item, relating to a freeze on the accrual of retirement benefits under any supplemental executive retirement plan, simply cannot appropriately be characterized as executive compensation. In fact the, the AFSCME Proposal is substantially the same as the seventh proposal. The AFSCME Proposal is appropriately presented as a stand-alone proposal. As noted above, the supporting statement of the ILPF Proposals focuses primarily on compensation levels, citing to “[g]enerous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership.” In addition, the ILPF Proposals cite to “serious financial losses” by shareholders as well as the Corporation’s recent “financial and stock price performance” as a need for the reforms. Finally, the ILPF Proposals call “for a set of more rigorous executive compensation reforms that . . . will significantly improve the pay-for-performance features of the Company’s plan.”

The hold-to-retirement aspect of the proposal presents an entirely different concept and is not driven by compensation levels or pay-for-performance. As noted in the AFSCME Proposal below, the hold-to-retirement proposal serves a different purpose than compensation levels. “Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders.” *AFSCME Proposal*. In addition, the hold-to retirement proposal is designed to “discourage excessive risk-taking and promote long-term, sustainable value creation.” *Id.* Citing a commission of The Conference Board that supported the holding requirement, the AFSCME Proposal states that “the long-term focus promoted thereby ‘may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions.’”

While the ILPF may argue that the Division’s response in *AT&T Wireless Services, Inc.* (February 11, 2004) (“*AT&T*”) is applicable because the Division found that a proposal requesting a wide-ranging “Commonsense Executive Compensation” program did not constitute more than one proposal, the ILPF Proposals are distinguishable. In *AT&T*, a proposal had five parts dealing with executive compensation and the supporting statement focused on excessive compensation levels. However, unlike the hold-to-retirement requirement of the ILPF Proposals, *AT&T* did not include an unrelated requirement. Accordingly, while the *AT&T* proposal arguably met the single concept test, the ILPF Proposals clearly do not.

Conclusion. Based on the forgoing, the ILPF Proposals may be omitted from the proxy materials pursuant to Rules 14a-8(c) and 14a-8(f) of the Exchange Act.

2. Exclusion of the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the AFSCME Proposal may be excluded for the reasons set forth below.

Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division has consistently concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. *See, e.g., Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the relevant part of the ILPF Proposals is identical to the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The relevant portion of the ILPF Proposals and the AFSCME Proposal clearly address the same issue—adoption of a 75% hold-to-retirement policy. Although the ILPF Proposals include additional proposals, and in effect entirely subsume the AFSCME Proposal, the relevant portions of the two proposals differ only slightly in implementation methodology. The ILPF Proposals urge the adoption of a "strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards." The AFSCME Proposal urges the adoption of a "policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCME Proposal further recommends that the Compensation and Benefits Committee of the Corporation's Board "not adopt a percentage lower than 75% of net after-tax shares." Although there are slight variances on the specific terms of implementation, such as the references to a two-year period and "net after-tax shares" in the AFSCME Proposal, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding their slightly different terminology.

In *Honeywell International, Inc.* (February 15, 2008) ("*Honeywell International*"), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requested that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." The Division found that the second proposal could be excluded in *Honeywell International* because it was substantially duplicative of the first proposal. As is the case with the AFSCME Proposal, which is subsumed by the ILPF Proposals, the first proposal in the *Honeywell International* letter subsumed the second proposal. *See also, Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth Corporation* (January 14, 1999) ("*BellSouth*"), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. *See also, Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the AFSCME Proposal differ in terms of implementation methodology, they clearly address the same core issue—adoption of a 75% hold-to-retirement policy.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the AFSCME Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative

and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. For instance, the ILPF Proposals request a different holding period upon retirement than the AFSCME Proposal. In addition, the ILPF Proposals apply to all shares obtained through equity awards, while the AFSCME Proposal applies only to net after-tax shares. The ILPF Proposals further include six other proposals that would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of relevant part of the ILPF Proposals and AFSCME Proposal are substantially the same.

If the Corporation is required to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the AFSCME Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

3. Exclusion of the Bell Proposal.

- A. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(b) and 14a-8(f) because the Proponent failed to provide the requested documentary support of the Proponent's stock ownership.**

The Corporation believes that the Bell Proposal may be properly omitted from its proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(b) and 14a-8(f). Pursuant to Rule 14a-8(b), a proponent must have continuously held at least \$2,000 in market value of voting securities for at least one year prior to submitting the proposal and must continue to hold those securities through the date of the meeting. Pursuant to Rule 14a-8(f), a registrant must request documentary support of the proponent's ownership within 14-calendar days of its receipt of the proposal, and the proponent must furnish such support within 14-calendar days of his or her receipt of the registrant's request.

On November 18, 2008, the Corporation received the Bell Proposal. The Corporation's stockholder records did not reflect that the Proponent was a record holder. Accordingly, by letter dated November 19, 2008, a copy of which is attached as Exhibit G, the Corporation requested, among other things, documentary support of Bell's ownership in the Corporation. The letter was sent certified mail, return receipt requested. Based on the return receipt received by the Corporation, a copy of which is attached as Exhibit H, Bell received the letter on November 26, 2008. The November 19, 2008 letter specifically referenced the 14-day deadline and provided



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the relevant portions of Rule 14a-8. In addition, the letter stated that Bell needed to provide documentary support that verified that "at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year." (emphasis added)

In response to the Corporation's request for documentary support of Bell's ownership, the Corporation received a letter dated December 1, 2008 from UBS Financial Services, Inc., Bell's broker (the "UBS Letter"). The UBS Letter is attached hereto as Exhibit I. The UBS Letter states, "Mrs. Andrea Loyd Bell is the trustee for the Harold Loyd Bypass Trust dated 11/01/99 that is held at UBS. The trust holds 7,132 Banc of America shares. The Trust has owned all of the BAC shares longer than one year."

To date, no other documentary support has been provided by Bell or UBS Financial Services, Inc.

The Corporation does not believe that the UBS Letter satisfies the documentary requirements. Under the most favorable reading of the UBS Letter, and having no reason to doubt the veracity of the UBS Letter, the Corporation can only be certain that Bell held the required amount of common stock continuously for "longer than one year" from December 1, 2008 (the date of the UBS Letter). However, there is no evidence meeting the requirements of Rule 14a-8 that verifies Bell's required ownership for one year prior to November 18, 2008 (the date the Bell Proposal was submitted). Based on the UBS Letter, there is no way to rule out the possibility that Bell acquired the her shares of common stock between November 19 and November 29, 2007, which would have made her ineligible to have submitted a proposal on November 18, 2008.

Consequently, Bell has not timely provided the required evidence to document her ownership of at least \$2,000 in market value of the Corporation's common stock continuously for at least one year prior to submitting the Bell Proposal.

The Division has consistently interpreted the procedural requirements under Rule 14a-8 strictly in finding proposals excludable. See *OCA, Inc.* (February 24, 2005) (proposal excludable where proponent submitted a statement of ownership stating he had held shares "continuously since January 8, 2004," rather than showing ownership from January 4, 2005 [sic], the date the proponent submitted his proposal); *Unocal Corporation* (February 25, 2004) (proposal excludable where proponent submitted a statement of ownership stating she held shares continuously from December 27, 2002 and not from December 9, 2003, the date of the proposal's submission); *AutoNation, Inc.* (March 14, 2002) (proposal excludable where proponent with proposal dated December 10, 2001 submitted a statement of ownership stating "he has continuously held those shares since December 12, 2000," rather than showing



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ownership from December 10, 2000); *Time Warner Inc.* (January 21, 2005) (proponent's compliance was one day late and therefore the proposal was excludable); and *Nabors Industries Ltd.* (March 8, 2005) (proponent's compliance was eight days late and therefore the proposal was excludable).

Since the Proponent failed to provide the requested documentary support of her stock ownership within the required 14-day period, she has failed to comply with the requirements of Rules 14a-8(b) and (f). Accordingly, the Proposal may properly be omitted from the Corporation's proxy materials.

- B. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(f)(2) and 14a-8(i)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal.**

Rule 14a-8(i)(2) permits a company to exclude a proposal if the proposal would cause the company to violate state law. Rule 14a-8(i)(6) permits a registrant to omit a proposal from its proxy materials if, upon passage, "the company would lack the power or authority to implement the proposal." The Bell Proposal requests that the "Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that **no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer.**" (emphasis added) By the terms of the Bell Proposal, long and short term compensation plans are "broadly defined" to include all plans and agreements. In addition, the Bell Proposal would prohibit the Corporation from fulfilling its legally binding obligations with respect to the payment of plan benefits for prior periods. By its terms, implementation of the Bell Proposal would violate the terms of previously granted awards under any benefit plan.

As a specific example, restricted stock units and stock options, among other forms of compensation have been issued to senior executives under the Corporation's 2003 Key Associate Stock Plan. These awards are issued pursuant to a Restricted Stock Units Award Agreement and an Stock Option Award Agreement, respectively. Each of these agreements are governed by Delaware law. With respect to currently outstanding awards under the 2003 Key Associate Stock Plan, the Corporation cannot unilaterally terminate its obligations under the awards.

The Proposal would require the Corporation to unilaterally terminate its legal obligations under outstanding Restricted Stock Units Award Agreements and an Stock Option Award Agreements, in breach of its contractual obligations to make payment on outstanding awards, all in violation of Delaware law. The Division has consistently permitted the exclusion of stockholder proposals



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pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6), and the predecessor to such rules, Rules 14a-8(c)(2) and 14a-8(c)(6), if the proposals would require the company to breach existing contractual obligations. See *NetCurrents, Inc.* (June 1, 2001); *The Goldfield Corporation* (March 28, 2001); *CoBancorp Inc.* (February 22, 1996); and *Pico Products, Inc.* (September 23, 1992).

Accordingly, it is my opinion that the implementation of the Proposal would require the Corporation to unilaterally terminate its obligations under the Restricted Stock Units Award Agreements and Stock Option Award Agreements, which would result in a breach of the Corporation's contractual obligations, in violation of Delaware law. Accordingly, the Bell Proposal is excludable under Rules 14a-8(i)(2) and 14a-8(i)(6).

C. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for a specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Bell Proposal seeks to create a direct link between long and short term incentive compensation of the named executive officers and the payment of a specific minimum dividend amount (i.e., \$0.64 per share per quarter for four consecutive quarters). The "quid pro quo" nature of the Bell Proposal, which makes long and short term incentive compensation of named executive officers dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of

remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to “a specific amount of cash dividends”); *Delmarva Power & Light Company* (February 12, 1996) (proposal calling for “no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year” and “[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share” was found excludable under Rule 14a-8(c)(13) as it “relates to a specific amount of cash dividends”); and *Delmarva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating “to specific amounts of cash dividends”). Unlike proposals seeking to establish general dividend policy, the Bell Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Bell Proposal seeks the payment of a specific dividend, namely \$0.64. As the Bell Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

D. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

In the event that the Division does not concur with the Corporation’s view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation’s proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation’s proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to “eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” *See Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same “principal thrust” or “principal focus,” notwithstanding that such proposals may differ as to terms and scope. *See, e.g., Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Bell Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Bell Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Bell Proposal similarly urges the amendment of long and short term incentive plans of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until certain targets have been met. Although there are variances in the specific terms and scope of implementation, the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards."

The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be “tied proportionately to the revenue growth at the end of the year.” The second *BellSouth* proposal requested that all incentive awards be “tied proportionately to the price of the stock at the end of the year.” The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Bell Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Bell Proposal in the Corporation’s proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal’s desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Bell Proposal would impose temporary limitations on executive compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Bell Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Bell Proposal may be excluded from the Corporation’s proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

4. Exclusion of the Schwartz Proposal.

- A. The Corporation may omit the Schwartz Proposal pursuant to Rule 14a-8(i)(6) because it lacks the power and authority to implement the Schwartz Proposal.**

Rule 14a-8(i)(6) provides that a company may omit a proposal “if the company would lack the power or authority to implement the proposal.” The Schwartz Proposal cannot be implemented without consent from third parties, and the Corporation cannot compel such third parties to

comply with the terms of the Schwartz Proposal. Accordingly, the Corporation lacks the power to implement the Schwartz Proposal.

The Schwartz Proposal recommends that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices." (emphasis added) By its terms, the only way the Schwartz Proposal can be implemented is if the "top tier management" of the Corporation "voluntarily" agrees to comply with the terms of the Schwartz Proposal. While the Corporation does have the power to request or suggest that senior executives voluntarily agree to the terms of the Schwartz Proposal, the Corporation has no power to force compliance by such persons. Merely asking for the cooperation of senior executives is not sufficient to implement the Schwartz Proposal; third parties must agree to cooperate independently.

The Commission has acknowledged that exclusion under Rule 14a-8(i)(6) may be justified where implementing the proposal would require intervening actions by independent third parties. *See Securities Exchange Act Release No. 34-40018* (May 21, 1998). The Division has consistently permitted the exclusion of stockholder proposals pursuant to Rule 14a-8(i)(6) where the proposal requires third party action or consent for their implementation. *See Catellus Development Corporation* (March 3, 2005) (proposal that company take certain actions related to property it no longer owned); *SCEcorp* (December 20, 1995) (proposal that unaffiliated fiduciary trustees amend voting agreements); *American Home Products Corp.* (February 3, 1997) (proposal requested the company provide certain warnings on its contraceptive products that were subject to government oversight and regulatory approval); and *American Electric Power Company, Inc.* (February 5, 1985) (proposal requested the completion of a nuclear plant that was jointly owned by two unaffiliated parties).

Based on the foregoing, the Corporation lacks both legal and practical authority to implement the Proposal, and, thus, the Proposal may be excluded under Rule 14a-8(i)(6).

B. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Schwartz Proposal seeks to create a direct link between salary levels, bonuses and stock option grants of top tier management of the Corporation until "the original full dividend is restored." While the Proponent does not expressly define this term, the Proponent's reference to

the Corporation's 50% cut in dividends in October 2008 indicates that the "original full dividend" refers to the dividend in effect immediately prior to the October 2008 dividend cut, which was \$0.64 per share of common stock. The "quid pro quo" nature of the Schwartz Proposal, which makes top tier management compensation dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to "a specific amount of cash dividends"); *Delmarva Power & Light Company* (February 12, 1996) (proposal calling for "no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year" and "[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share" was found excludable under Rule 14a-8(c)(13) as it "relates to a specific amount of cash dividends"); and *Delmarva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating "to specific amounts of cash dividends"). Unlike proposals seeking to establish general dividend policy, the Schwartz Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Schwartz Proposal seeks payment of a specific dividend, namely \$0.64. As the Schwartz Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

C. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

The Schwartz Proposal Substantially Duplicates the ILPF Proposals. In the event that the Division does not concur with the Corporation's view that neither the ILPF Proposals nor the Bell Proposal may be excluded for the reasons set forth above, the Corporation believes that the Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Schwartz Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Schwartz Proposal similarly requests that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices" until certain targets have been met. Although there are variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for

annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation, and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, will result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Schwartz Proposal would impose temporary limitations on executive

compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Schwartz Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

The Schwartz Proposal Substantially Duplicates the Bell Proposal. Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the Bell Proposal is identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the Bell Proposal may be excluded for the reasons set forth above, the Corporation intends to include the Bell Proposal previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The Bell Proposal and the Schwartz Proposal clearly address the same issue—limiting executive compensation. In fact, the Bell Proposal and the Schwartz Proposal are very similar in their approach.

As noted above, the Schwartz Proposal recommends that

top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.)



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accept no stock options at prices less than 50% of the past all-time high stock prices . . . until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

Although there are slight variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock



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option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the Bell Proposal and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the Bell Proposal and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the Bell Proposal and Schwartz Proposal are substantially the same.

If the Corporation is required to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the Bell Proposal that was previously submitted to the Corporation.

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposals may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

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If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Indiana Laborers Pension Fund
American Federation of State, County & Municipal Employees
Andrea Loyd Bell
Donald M. and Judith A. Schwartz

Exhibit A

INDIANA LABORERS PENSION FUND

P.O. Box 1587 • Terre Haute, Indiana 47808-1587
Telephone 812-238-2551 • Toll Free 800-962-9158 • Fax 812-238-2553

Sent Via Fax (704) 386-6699

November 13, 2008

NOV 17 2008

Ms. Alice Herald
Deputy General Counsel and Corporate Secretary
Bank of America Corporation
100 North Tryon Street
Bank of America Corporate Center
Charlotte, NC 28255

Dear Ms. Herald,


On behalf of the Indiana Laborers Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Bank of America Corporation ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Fund is the beneficial owner of approximately 38,675 shares of the Company's common stock, which have been held continuously for more than a year prior to this date of submission. The Proposal is submitted in order to promote a governance system at the Company that enables the Board and senior management to manage the Company for the long-term. Maximizing the Company's wealth generating capacity over the long-term will best serve the interests of the Company shareholders and other important constituents of the Company.

The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Jennifer O'Dell, Assistant Director of the LIUNA Department of Corporate Affairs at (202) 942-2359. Copies of correspondence or a request for a "no-action" letter should be forwarded to Ms. O'Dell at the following address: Laborers' International Union of North America, 905 16th Street, NW, Washington, DC 20006.

Sincerely,



Michael J. Short
Secretary-Treasurer

cc: Jennifer O'Dell
Enclosure

OFFICERS - BOARD OF TRUSTEES

ERIC C. COOK
CHAIRMAN

MICHAEL J. SHORT
SECRETARY-TREASURER

JANETTA E. ENGLAND
ADMINISTRATIVE MANAGER

Resolved: Given that Bank of America Corporation ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

Supporting Statement: Many Company shareholders are experiencing serious financial losses related to the problems afflicting our nation's credit markets and economy. The Company's financial and stock price performance has been challenged by these credit market events and their impact on the nation's economy. The Company's participation in the Stabilization Act's TARP is the result of these broad capital market problems and decisions made by Company senior executives.

Generous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership. Establishing renewed investor confidence in the markets and corporate leadership is a critical challenge. Congress enacted executive compensation requirements for those companies participating in the Stabilization Act's TARP. Unfortunately, we believe those executive compensation restrictions fail to adequately address the serious shortcomings of many executive compensation plans. This proposal calls for a set of more rigorous executive compensation

reforms that we believe will significantly improve the pay-for-performance features of the Company's plan and help restore investor confidence. Should existing employment agreements with Company senior executives limit the Board's ability to implement any of these reforms, the Board and its compensation committee is urged to implement the proposed reforms to the greatest extent possible. At this critically important time for the Company and our nation's economy, the benefits afforded the Company from participation in the TARP justify these more demanding executive compensation reforms.



Committee
Gerald W. McEntee
William Lury
Edward J. Keller
Kathy J. Sedeman
Henry C. Schuff

EMPLOYEES PENSION PLAN

November 17, 2008

VIA Overnight Mail and Telecopier (704) 386-5083

Bank of America Corporation
101 South Tryon Street, NC1-002-29-01
Charlotte, North Carolina 28255
Attention: Alice Herald, Deputy General Counsel and Corporate Secretary

Dear Ms. Herald:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2008 proxy statement of Bank of America (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2009 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 78,372 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Charles Jurgonis at (202) 429-1007.

Sincerely,

GERALD W. McENTEE
Chairman

Enclosure

RESOLVED, that stockholders of Bank of America Corporation ("Bank of America") urge the Compensation and Benefits Committee of the Board of Directors (the "Committee") to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise), and to report to stockholders regarding the policy before Bank of America 2010 annual meeting of stockholders. The stockholders recommend that the Committee not adopt a percentage lower than 75% of net after-tax shares. The policy should address the permissibility of transactions such as hedging transactions which are not sales but reduce the risk of loss to the executive.

SUPPORTING STATEMENT

Equity-based compensation is an important component of senior executive compensation at Bank of America. According to Bank of America 2008 proxy statement, most of the total annual compensation opportunity for executive officers is provided in stock.

We believe there is a link between shareholder wealth and executive wealth that correlates to direct stock ownership by executives. According to an analysis conducted by Watson Wyatt Worldwide, companies whose CFOs held more shares generally showed higher stock returns and better operating performance. (Alix Stuart, "Skin in the Game," CFO Magazine (March 1, 2008))

Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders. In the context of the current financial crisis, we believe it is imperative that companies reshape their compensation policies and practices to discourage excessive risk-taking and promote long-term, sustainable value creation. A 2002 report by a commission of The Conference Board endorsed the idea of a holding requirement, stating that the long-term focus promoted thereby "may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions."

Bank of America has a minimum stock ownership guideline requiring directors and executives to own a certain number of shares of Bank of America stock. The directors and executives covered by the policy have five years in which to comply. We believe this policy does not go far enough to ensure that equity compensation builds executive ownership. We also view a retention requirement approach as superior to a stock ownership guideline because a guideline loses effectiveness once it has been satisfied.

We urge stockholders to vote for this proposal.

December 2, 2008

Kristin Marie Oberheu
Bank of America Corporation
NCI-002-29-01
101 South Tryon Street
Charlotte, NC 28255

Dear Ms. Oberheu:

Thank you for your response to my shareholder proposal. The information you provided was very helpful. I received your letter on November 26, 2008.

Attached please find my revised proposal which is in response to your position that my original submission actually contained multiple proposals. I would like this revised proposal to be included in the proxy statement for the 2009 Annual Meeting of Stockholders.

With regard to the "record" holder issue you will receive a letter from UBS under separate cover that should provide the information you requested. This letter was mailed from their offices in Atlanta, Ga on December 1, 2008. For your convenience I have attached a copy of the letter you will receive from UBS.

Regarding my intentions to hold the shares please consider this letter as my written statement that, in accordance with Rule 14a-8(b), it is my intention to continue to hold the shares through the date of the 2009 meeting of shareholders.

Thank you,


Andrea Loyd Bell

Harold Loyd By Pass Trust
U/W DTD 11/1/99
Andrea Loyd Bell Trustee

BANK OF AMERICA SHAREHOLDER PROPOSAL

PROPOSAL: To approve a proposal to request that the Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

SUPPORTING STATEMENT: On October 6-7, 2008 company management took deliberate actions that resulted in a significant reduction in shareholder value. These actions included offering approximately 455 million shares of common stock priced at \$22 per share which was significantly below the market value and reducing the quarterly dividend to \$0.32 from \$0.64. While these actions may be in the long term best interest of the company, it would be inconsistent and inappropriate for named executives to profit while shareholders suffer. Therefore the purpose of this proposal is to align executive's interests with those of the shareholders by requiring that no named executive officer accrues or receives any value from any variable pay arrangement until such time as the lost shareholder value has been restored.

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

November 24, 2006

Bank of America Corporation
Attn: Shareholder Relations
100 North Tryon Street
Charlotte, NC 28255

To whom it may concern:

We are shareholders in Bank of America Corporation. In our four accounts at Smith Barney we have 21,128 common shares. See enclosed Smith Barney statements (highlighted).

Enclosed please also find a proposal to the shareholders of Bank of America to be included on the proxy ballot for the annual meeting next calendar year in 2009. In a recent conversation with BAC's corporate headquarters we were told such ballot questions need to be submitted by December 9, 2008 to be included. We are therefore forwarding this communication by certified mail to ensure its timely arrival.

We can be reached at the Florida address above after December 29, 2008. The telephone ~~there is~~ ~~until that time we will be at~~

*** FISMA & OMB Memorandum M-07-16 *** with telephone *** FISMA & OMB Memorandum M-07-16 ***
Please contact us with any proposed wording or format changes that may be necessary to comply with existing corporate covenants regarding such matters.

Respectfully submitted,

Donald M. Schwartz
Donald M. Schwartz
Judith A. Schwartz
Judith A. Schwartz

CHARLOTTE, NC
NOV 28 08
BANK OF AMERICA
LEGAL DEPARTMENT

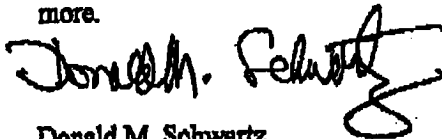
WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and

WHEREAS: The common stock dividend of Bank of America Corporation has been reduced by 50%, even after assurances by the president and CEO that it was safe, and

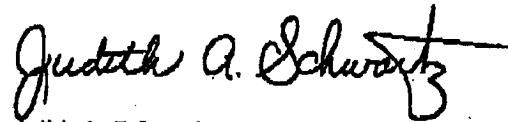
WHEREAS: Top tier management of Bank of America Corporation, must, in spite of a severe economic downturn, bear its share of the responsibility for the poor performance of the corporation,

THEREFORE, BE IT RESOLVED: That the common stockholders of Bank of America Corporation recommend that top tier management of Bank of America Corporation Voluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices.

We further recommend that the voluntary actions listed above remain in effect until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs and remains above that figure for six months or more.



Donald M. Schwartz



Judith A. Schwartz



Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Indiana Laborers' Pension Fund
c/o Laborers' International Union
of North America
Attention: Ms. Jennifer O'Dell
905 16th Street NW
Washington, DC 20006

Re: Bank of America Corporation (the "Corporation")

Dear Ms. O'Dell:

On November 17, 2008, we received Indiana Laborers' Pension Fund's ("Fund") request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider the Fund's request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in the Fund's submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe the Fund has submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(c) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise the Fund's submission so that the Fund is submitting only one proposal.

Our records do not reflect that the Fund is the "record" holder of their shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of the Fund's shares, verifying that, at the time the Fund submitted their proposal, the Fund held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our proxy statement.

Again, please note that if we do not receive the Fund's revised submission and their ownership documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our 2009 proxy statement.

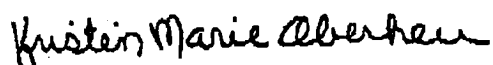
Bank of America, NCH-001-89-01
101 S. Tryon Street, Charlotte, NC 28255

General Proxy

In asking the Fund to provide the foregoing information, the Corporation does not relinquish its right to later object to including the Fund's proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NCI-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment

Exhibit F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the envelope, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Signature <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Restricted Delivery (Printed Name) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Date of Delivery 12/18/08</p>
<p>1. Article Addressed to:</p> <p style="text-align: center;">Indiana Laborers' Pension Fund c/o Laborers' International Union of North America Attn: Ms. Jennifer O'Dell 905 16th Street NW Washington, DC 20006</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>2. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> G.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Number from service label)</p>	<p style="text-align: center; font-size: 1.2em;">7004 1160 0007 1426 7716</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 10992-02-01-040</p>	

Bell

*** FISMA & OMB Memorandum M-07-16 ***

p. 2



Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Ms. Andrea Loyd Bell

*** FISMA & OMB Memorandum M-07-16 ***

Re: Bank of America Corporation (the "Corporation")

Dear Ms. Bell:

On November 18, 2008, we received your request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider your request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in your submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(e) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe you have submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(c) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise your submission so that you are submitting only one proposal.

Our records do not reflect that you are the "record" holder of your shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of your shares, verifying that, at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our proxy statement.

In addition, under Rule 14a-8(b), you must also provide us with a written statement that you intend to continue to hold your securities through the date of the 2009 annual meeting of shareholders. We must receive your written statement within 14 calendar days of your receipt of this letter.

Bell

FISMA & OMB Memorandum M-07-16

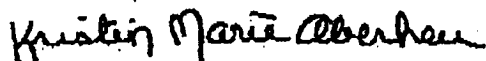
P. 3

Again, please note that if we do not receive your revised submission, your ownership documentation or your written statement within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our 2009 proxy statement.

In asking you to provide the foregoing information, the Corporation does not relinquish its right to later object to including your proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NCI-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION TO DELIVER
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p style="text-align: center;">Ms. Andrea Loyd Bell</p>	<p>A. Signature <i>Constance Loyd Bell</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Andrea Loyd Bell</i></p> <p>C. Date of Delivery NOV 26</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from carrier label)</p>	<p style="text-align: center;">7004 1160 0007 1426 7709</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 10250-02-10-1500</p>	

SMA & OMB Memorandum No. 07-045



UBS Financial Services Inc.
3455 Peachtree Rd. NE
Suite 1700
Atlanta, GA 30328
Tel. 404-760-3312
Fax 404-760-3027
Toll Free 800-734-6328

Leonard M. Starr, CIMA®
Senior Vice President - Investments
Advisory & Brokerage Services
Prime Consultant
Prime Asset Consulting Program
leonard.starr@ubs.com

www.ubs.com

December 1, 2008

Bank of America
Kristin Marie Oberhaus
101 S Tryon Street
Charlotte, NC 28255

Dear Kristin,

Mrs. Andrea Lloyd Bell is the trustee for the Harold Lloyd Bypass Trust dated 11/01/88 that is held at UBS. The trust holds 7,192 Bank of America shares. The Trust has owned all of the BAC shares longer than one year. If you have any questions please call me at 404-760-3000.

Sincerely,

A handwritten signature in black ink that reads "Leonard Starr".

Leonard Starr, CIMA
Senior Vice President-Investments
Advisory & Brokerage Services

cc: Andrea Lloyd Bell

EXHIBIT B

See attached.

INDIANA LABORERS PENSION FUND

P.O. Box 1587 • Terre Haute, Indiana 47808-1587
 Telephone 812-238-2551 • Toll Free 800-962-3158 • Fax 812-258-2553

Sent Via Fax (704) 386-6699

November 13, 2008

NOV 17 2008

Ms. Alice Herald
 Deputy General Counsel and Corporate Secretary
 Bank of America Corporation
 100 North Tryon Street
 Bank of America Corporate Center
 Charlotte, NC 28255

Dear Ms. Herald,

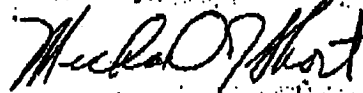
On behalf of the Indiana Laborers Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Bank of America Corporation ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Fund is the beneficial owner of approximately 38,675 shares of the Company's common stock, which have been held continuously for more than a year prior to this date of submission. The Proposal is submitted in order to promote a governance system at the Company that enables the Board and senior management to manage the Company for the long-term. Maximizing the Company's wealth generating capacity over the long-term will best serve the interests of the Company shareholders and other important constituents of the Company.

The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Jennifer O'Dell, Assistant Director of the ILUNA Department of Corporate Affairs at (202) 942-2359. Copies of correspondence or a request for a "no-action" letter should be forwarded to Ms. O'Dell at the following address: Laborers' International Union of North America, 905 16th Street, NW, Washington, DC 20006.

Sincerely,



Michael J. Short
 Secretary-Treasurer

cc: Jennifer O'Dell
 Enclosure

OFFICERS - BOARD OF TRUSTEES

ERIC C. COOK
 CHAIRMAN

MICHAEL J. SHORT
 SECRETARY-TREASURER

JANETTA E. ENGLAND
 ADMINISTRATIVE MANAGER

Resolved: Given that Bank of America Corporation ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

Supporting Statement: Many Company shareholders are experiencing serious financial losses related to the problems afflicting our nation's credit markets and economy. The Company's financial and stock price performance has been challenged by these credit market events and their impact on the nation's economy. The Company's participation in the Stabilization Act's TARP is the result of these broad capital market problems and decisions made by Company senior executives.

Generous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership. Establishing renewed investor confidence in the markets and corporate leadership is a critical challenge. Congress enacted executive compensation requirements for those companies participating in the Stabilization Act's TARP. Unfortunately, we believe those executive compensation restrictions fail to adequately address the serious shortcomings of many executive compensation plans. This proposal calls for a set of more rigorous executive compensation

reforms that we believe will significantly improve the pay-for-performance features of the Company's plan and help restore investor confidence. Should existing employment agreements with Company senior executives limit the Board's ability to implement any of these reforms, the Board and its compensation committee is urged to implement the proposed reforms to the greatest extent possible. At this critically important time for the Company and our nation's economy, the benefits afforded the Company from participation in the TARP justify these more demanding executive compensation reforms.

EXHIBIT C

See attached.

December 31, 2008

**Response of the Office of Chief Counsel
Division of Corporation Finance**

Re: SunTrust Banks, Inc.
Incoming letter dated November 21, 2008

The proposal urges that, in the event SunTrust chooses to participate in the Troubled Asset Relief Program established by the Economic Emergency Stabilization Act, by selling any amount of troubled assets to the U.S. Treasury, the board and its compensation committee implement specified reforms to impose limitations on senior executive compensation.

There appears to be some basis for your view that SunTrust may exclude the proposal under rule 14a-8(i)(3) as vague and indefinite. In arriving at this position, we note the proponent's statement that the "intent of the Proposal is that the executive compensation reforms urged in the Proposal remain in effect so long as the company participates in the TARP." By its terms, however, the proposal appears to impose no limitation on the duration of the specified reforms. Accordingly, we will not recommend enforcement action to the Commission if SunTrust omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3). In reaching this position we have not found it necessary to address the alternative bases for omission upon which SunTrust relies.

Sincerely,

Raymond A. Be
Special Counsel



RECEIVED

2009 JAN -6 AM 11:36

OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

HUNTON & WILLIAMS LLP
BANK OF AMERICA PLAZA
SUITE 3500
101 SOUTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28280

TEL 704 • 378 • 4700
FAX 704 • 378 • 4890

ANDREW A. GERBER
DIRECT DIAL: 704-378-4718
EMAIL: agerber@hunton.com

FILE NO: 46123.74

January 2, 2009

Rule 14a-8

BY ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Supplemental Letter No. 2 for Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

By letters dated December 23, 2008 and December 29, 2008 (the "Initial Letters"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted a proposal (the "Proposal") received from Donald M. and Judith A. Schwartz (the "Proponents") from its proxy materials for the 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") for the reasons set forth therein. The Initial Letter dated December 29, 2008 is attached hereto as **Exhibit A**. Please note that the Initial Letter dated December 23, 2008 is attached as Exhibit A to the Initial Letter dated December 29, 2008.

The Initial Letter dated December 23, 2008 stated that the Corporation could exclude the Proposal under Rule 14a-8(i)(6), Rule 14a-8(i)(13) and Rule 14a-8(i)(11). The Initial Letter dated December 29, 2008 stated that the Corporation could exclude the Proposal under Rules 14a-8(b) and (f) because the Proponents failed to timely provide a written statement that they intend to hold their stock in the Corporation through the date of the 2009 Annual Meeting.

On December 26, 2008, the Corporation received a letter from the Proponents (the "Proponent Letter") that included the required written statement that they intend to hold their stock in the Corporation through the date of the 2009 Annual Meeting. However, due to the holidays, the Proponents' written statement was not routed to the proper person until December 30, 2008 (after



Securities and Exchange Commission

January 2, 2009

Page 2

the December 29, 2008 letter was submitted to the Division). Accordingly, the written statement required by Rule 14a-8(b) was timely provided to the Corporation. Based on the forgoing, as counsel to the Corporation, we hereby withdraw our Initial Letter dated December 29, 2008 requesting confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposal from its proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(b) and (f).

In response to the Corporation's earlier request that the Proponents reduce the number of proposals they submitted to one, the Proponent Letter included a revised proposal (the "Revised Proposal"). The Revised Proposal is attached hereto as **Exhibit B**.

THE REVISED PROPOSAL

The Proposal recommends "that top tier management of Bank Of [sic] America Corporation voluntarily and temporarily reduce their compensation in all forms by 50% until such time as the stock regains a price of 50% of its all-time highs [sic], with full dividend restoration."

REASONS FOR EXCLUSION OF THE REVISED PROPOSAL

For the same reasons set forth in our letter dated December 23, 2008, the Corporation believes that the Revised Proposal can be excluded under Rule 14a-8(i)(6), Rule 14a-8(i)(13) and Rule 14a-8(i)(11). As discussed below, the Revised Proposal is essentially same as the original Proposal. **Accordingly, to avoid repeating the arguments set forth in the Initial Letter dated December 23, 2008 in full, we hereby incorporate by reference herein the arguments set forth in Part 4 of the Initial Letter dated December 23, 2008.**

The original Proposal recommended "that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices." These actions are to remain in place "until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more."

Like the initial Proposal, the Revised Proposal clearly relates to executive compensation. The Revised Proposal merely collapses the three listed types of compensation (i.e., salaries, bonuses and stock options) into the phrase "compensation in all forms." Also, like the original Proposal, the Revised Proposal still requires the "voluntary" action of the Corporation's senior management. In addition, the Revised Proposal is tied to the Corporation's stock price and restoration of the full dividend.



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1. The Corporation may omit the Revised Proposal pursuant to Rule 14a-8(i)(6) because it lacks the power and authority to implement the Revised Proposal.

The Revised Proposal cannot be implemented without consent from third parties, and the Corporation cannot compel such third parties to comply with the terms of the Revised Proposal. Accordingly, the Corporation lacks the power to implement the Revised Proposal. The Revised Proposal recommends that “top tier management of Bank Of [sic]America Corporation *voluntarily* and temporarily reduce their compensation in all forms.” (emphasis added) By its terms, the only way the Revised Proposal can be implemented is if the “top tier management” of the Corporation “voluntarily” agrees to comply with the terms of the Revised Proposal. While the Corporation may request or suggest that senior executives voluntarily agree to the terms of the Revised Proposal, the Corporation lacks the power to force compliance by such persons. Merely asking for the cooperation of senior executives is not sufficient to implement the Revised Proposal; third parties must agree to cooperate independently. Based on the foregoing, the Corporation lacks both legal and practical authority to implement the Revised Proposal, and, thus, the Revised Proposal may be excluded under Rule 14a-8(i)(6).

2. The Revised Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a stockholder proposal is excludable if it relates to specific amounts of cash or stock dividends. The Revised Proposal creates a direct link between all forms of compensation of top tier management of the Corporation until “full dividend restoration” has occurred. The Proponents do not expressly define “full dividend restoration”; however, the Revised Proposal’s reference to the Corporation’s 50% cut in dividends indicates that “full dividend restoration” refers to the dividend in effect immediately prior to the Corporation’s October 2008 dividend cut, which was \$0.64 per share of common stock. This meaning is also clear from the language of the original Proposal and is the only reasonable interpretation of the Revised Proposal. The “quid pro quo” nature of the Revised Proposal, which makes top tier management compensation dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)’s prohibition on stockholder proposals seeking specific dividends. The Division has consistently held stockholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). Unlike proposals seeking to establish general dividend policy, the Revised Proposal seeks a specific amount of dividends (i.e., \$0.64 per share) and uses executive compensation as leverage to get such dividends. As the Revised Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).



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3. The Revised Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

The Revised Proposal substantially duplicates the proposals (the "ILPF Proposals") submitted by the Indiana Laborers Pension Fund ("ILPF"). In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth in our Initial Letter dated December 23, 2008, the Corporation intends to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Revised Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Revised Proposal similarly requests that "top tier management of Bank Of [sic] America Corporation voluntarily and temporarily reduce their compensation in all forms by 50%." Although the Revised Proposal and the ILPF Proposals vary in specific terms and scope of implementation, it is clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Revised Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and recommend a general and permanent policy change to limit compensation and also include an additional proposal unrelated to limitations on executive compensation. The Revised Proposal seeks to impose temporary limitations on executive compensation that would end once the proposed dividend and stock price targets were satisfied. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer. Further, the Board of Directors would not be able to fully implement each proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Revised Proposal are substantially the same.

If the Corporation is required to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Revised Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

The Revised Proposal substantially duplicates the proposal (the "Bell Proposal") submitted by Andrea Loyd Bell ("Bell"). In the event that the Division does not concur with the Corporation's view that the Bell Proposal may be excluded for the reasons set forth in our Initial Letter dated



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December 23, 2008, the Corporation intends to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting. The Bell Proposal and the Revised Proposal clearly address the same issue—limiting executive compensation and dividend restoration— and are very similar in their approach.

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

Although there are slight variances in the specific terms and scope of implementation between the two proposals, it is clear that the proposals share the same “principal thrust” or “principal focus,” and are substantially duplicative, notwithstanding that their terms differ slightly.

In addition, the Corporation believes the inclusion of the Bell Proposal and the Revised Proposal in the Corporation’s proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer. Further, the Board of Directors would not be able to fully implement each proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the Bell Proposal and Revised Proposal are substantially the same.

If the Corporation is required to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting, the Revised Proposal may be excluded from the Corporation’s proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the Bell Proposal that was previously submitted to the Corporation.

**HUNTON &
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January 2, 2009

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If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Donald M. and Judith A. Schwartz

**HUNTON &
WILLIAMS**

EXHIBIT A

See attached.



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ANDREW A. GERBER
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December 29, 2008

Rule 14a-8

BY ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Supplemental Letter for Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

By letter dated December 23, 2008 (the "Initial Letter"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted a proposal (the "Proposal") received from Donald M. and Judith A. Schwartz (the "Proponents") from its proxy materials for the 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") for the reasons set forth therein. The Initial Letter is attached hereto as **Exhibit A**.

As counsel to the Corporation, we hereby supplement the Initial Letter and request confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposal from its proxy materials for the 2009 Annual Meeting for the additional reason set forth herein. This letter is intended to supplement, but does not replace, the Initial Letter.

GENERAL

A copy of the Proposal is attached hereto as **Exhibit B**. As stated in the Initial Letter, the 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the



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“Exchange Act”), enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that it may exclude the Proposal; and
2. Six copies of the Proposal.

A copy of this letter is also being sent to the Proponents as notice of the Corporation’s intention to omit the Proposal from the Corporation’s proxy materials for the 2009 Annual Meeting.

SUMMARY OF PROPOSAL

The Proposal recommends “that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices.” These actions are to remain in place “until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.”

ADDITIONAL REASON FOR EXCLUSION OF PROPOSAL

The Corporation believes that the Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(b)(2) and Rule 14a-8(f) because the Proponents have not provided a written statement indicating that they intend to hold their stock in the Corporation through the date of the 2009 Annual Meeting. Rule 14a-8(b)(2) provides that in order for the Proponents to be eligible to submit a shareholder proposal at the 2009 Annual Meeting, the Proponents must provide a written statement that they will continue to hold their securities through the date of the 2009 Annual Meeting. As described below, the Proponents did not provide the required written statement and, therefore, the Proposal may be omitted from the Corporation’s proxy materials for the 2009 Annual Meeting.

As noted above, the Proposal was received by the Corporation on November 29, 2008. The Proponents failed to state in either the Proposal or accompanying cover letter that they intend to hold their securities through the date of the 2009 Annual Meeting. The Corporation informed the Proponents, by letter dated December 10, 2008 (the “Defect Letter”), of this defect in their submission. The Defect Letter specifically requested that the Proponents provide a written statement that they intend to hold their securities through the date of the 2009 Annual Meeting. A copy of the Defect Letter is attached hereto as Exhibit C. The Defect Letter was sent to the Proponents by Federal Express on December 10, 2008 (a date within 14 days of the Corporation’s receipt of the Proposal). The Defect Letter clearly notified the Proponents that they had 14 calendar days from their receipt of the Defect Letter to provide the requested written statement. In addition,

HUNTON & WILLIAMS

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the Corporation provided a copy of Rule 14a-8 with the Defect Letter. According to Federal Express tracking records, a copy of which is attached hereto as Exhibit D, the Defect Letter was received on December 12, 2008. As of the date of this letter, the Proponents have not responded to the Defect Letter and, specifically, have not provided the required written statement that they intend to hold their securities through the date of the 2009 Annual Meeting.

The Division has consistently concluded that a shareholder proposal may be properly omitted from a company's proxy materials pursuant to Rule 14a-8(b) and Rule 14a-8(f) where the proponent failed provide the required written statement. See *Bank of America Corporation* (December 28, 2007); *Harleysville Savings Financial Corporation* (October 23, 2007); and *Viad Corp.* (March 19, 2007). Accordingly, the Proposal may be omitted from the proxy materials for the Corporation's 2009 Annual Meeting pursuant to Rule 14a-8(b) and Rule 14a-8(f).

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Donald M. and Judith A. Schwartz

**HUNTON &
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EXHIBIT A

See attached.



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FILE NO: 46123.74

December 23, 2008

Rule 14a-8

BY OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Stockholder Proposal Submitted by the Indiana Laborers Pension Fund
Stockholder Proposal Submitted by the American Federation of State, County &
Municipal Employees
Stockholder Proposal Submitted by Andrea Loyd Bell
Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

Pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), we request confirmation that the Staff of the Division of Corporation Finance (the "Division") will not recommend enforcement action if the Corporation omits from its proxy materials for the Corporation's 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") the proposal described below for the reasons set forth herein. The statements of fact included herein represent our understanding of such facts.

GENERAL

The Corporation received: (i) several proposals and a supporting statement dated November 13, 2008 (the "ILPF Proposals") from the Indiana Laborers Pension Fund (the "ILPF"), (ii) a proposal and supporting statement dated November 17, 2008 (the "AFSCME Proposals") from the American Federation of State, County & Municipal Employees ("AFSCME"), (iii) a revised proposal and supporting statement dated December 2, 2008 (the "Bell Proposal") from Andrea Loyd Bell ("Bell") and (iv) a proposal and supporting statement dated November 24, 2008 (the "Schwartz Proposal") from Donald M. and Judith A. Schwartz ("Schwartz" and ILPF, AFSCME, Bell and Schwartz each a "Proponent") for inclusion in the proxy materials for the 2009 Annual

ATLANTA AUSTIN BANGKOK BEIJING BRUSSELS CHARLOTTE DALLAS HOUSTON LONDON
LOS ANGELES McLEAN MIAMI NEWYORK NORFOLK RALEIGH RICHMOND SAN FRANCISCO SINGAPORE WASHINGTON
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Meeting. The ILPF Proposals, the AFSCME Proposal, the Bell Proposal and the Schwartz Proposal (collectively, the "Proposals") are attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D, respectively. The 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(j) promulgated under the Exchange Act, enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that it may exclude the Proposals; and
2. Six copies of the Proposals.

With respect to Section 3.B. below, this letter shall also serve as my opinion of counsel. I am licensed to practice law in the States of North Carolina and Maryland.

A copy of this letter is also being sent to each Proponent as notice of the Corporation's intent to omit the Proposals from the Corporation's proxy materials for the 2009 Annual Meeting.

SUMMARY OF THE PROPOSALS

The ILPF Proposals

The ILPF Proposals urge the Board of Directors and its compensation committee to implement the following "*set of executive compensation reforms that impose important limitations on senior executive compensation*" (emphasis added):

- limits on target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- a freeze on new stock option awards, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- adoption of an equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;

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- prohibition of accelerated vesting for all unvested equity awards;
- limits on all severance payments to an amount no greater than one times annual salary; and
- a freeze on the accrual of retirement benefits under any supplemental executive retirement plan.

The ILPF Proposals were received by the Corporation via certified mail on the morning of November 17, 2008.

The AFSCME Proposal

The AFSCMB Proposal urges the Compensation and Benefits Committee of the Board of Directors (the "Committee") "to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCMB Proposal further recommends that the Committee "not adopt a percentage lower than 75% of net after-tax shares." The AFSCME Proposal was received by the Corporation by facsimile on November 17, 2008 at 5:54 p.m. Eastern Standard Time.

The Bell Proposal

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

The Bell Proposal was originally received by the Corporation on November 18, 2008 and was subsequently revised on December 2, 2008.



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The Schwartz Proposal

The Schwartz Proposal recommends "that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices." These actions are to remain in place "until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more." The Schwartz Proposal was received by the Corporation on November 28, 2008.

REASONS FOR EXCLUSION OF PROPOSALS

1. **The ILPF Proposals**—The Corporation believes that the ILPF Proposals may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(c) because the ILPF has violated the one proposal limitation.
 2. **The AFSCME Proposal**—In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the AFSCME Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the AFSCME Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.
 3. **The Bell Proposal**—The Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to (i) Rule 14a-8(b) and (f) because Bell has failed, upon timely request, to provide the required ownership information to establish eligibility to submit a proposal under Rule 14a-8 and (ii) Rule 14a-8(i)(13) because the Bell Proposal relates to a specific amount of dividends. In addition, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal. In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Bell Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.
 4. **The Schwartz Proposal**—The Corporation believes that the Schwartz Proposal may be excluded pursuant to (i) Rule 14a-8(i)(6) because the Corporation lacks the power and authority
-

to implement the Schwartz Proposal and (ii) Rule 14a-8(i)(13) because the Schwartz Proposal relates to a specific amount of dividends. In addition, in the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting. Finally, in the event that the Bell Proposal is not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the Bell Proposal) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.

1. Exclusion of the ILPF Proposals.

The ILPF Proposal consists of seven different proposals. Rule 14a-8(c) provides that each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. The Rule further provides that a stockholder may comply with the rule by reducing the number of proposals to one within 14 days from notification of the defect by the company. Notwithstanding the fact that the ILPF has framed its request in terms of one shareholder resolution, the ILPF Proposals submitted by the ILPF violate Rule 14a-8(c) because they consist of more than one proposal and, in fact, constitute as many as seven separate proposals. The ILPF Proposals were received by the Corporation on November 17, 2008. By letter dated November 19, 2008, the Corporation notified the ILPF that its submission violated Rule 14a-8(c) and requested that a revised proposal be submitted to the Corporation within 14 days of the ILPF's receipt of the letter. A copy of the November 19, 2008 letter is attached hereto as Exhibit E, and the evidence of the ILPF's receipt of such letter on November 25, 2008 is attached as Exhibit F. As of the date of this letter, the ILPF has failed to respond to the request.

The ILPF has acknowledged that the ILPF Proposals represent more than one request by requesting that the Corporation include the "set" of "reforms" and by setting forth the ILPF Proposals in seven separate bullet points. The Division has consistently taken the position that substantially distinct proposals may not be considered a single proposal for purposes of Rule 14a-8(c). See *Fotoball, Inc.* (May 6, 1997) (proposals relating to a minimum share ownership of directors, form of director compensation and business relationships between an issuer and its non-employee directors constitute multiple proposals) and *American Electric Power Company, Inc.* (January 2, 2001) (proposals relating to tenure, meetings and compensation of the board constitute multiple proposals). In certain circumstances, the Division has taken the position that multiple proposals will be deemed to constitute one proposal if they are related to a single, well-defined unifying concept. See *Securities Exchange Act Release No. 12999* (November 22,

HUNTON & WILLIAMS

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1976). Unlike the proposals set forth in *Computer Horizons Corp.* (April 1, 1993) (proposals unified by the concept of the elimination of takeover defenses), the ILPF Proposals represent more than a single, well defined unifying concept. As a result, the Corporation believes that it may exclude the ILPF Proposals in accordance with Rule 14a-8(f)(1) because of the ILPF's failure to comply with Rule 14a-8(c).

Although the ILPF Proposals are packaged as a "set of executive compensation reforms," they address multiple concepts that are not well defined, including both compensation matters and corporate governance matters. The ILPF Proposals seek to (1) limit target annual incentive compensation, (2) require that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, (3) freeze new stock option awards, (4) impose a 75% "hold-to-retirement" policy on shares of stock obtained through equity awards, (5) prohibit accelerated vesting for all unvested equity awards, (6) limit severance payments and (7) freeze accrual of retirement benefits under supplemental executive retirement plans. The Division has found that even "where the components [of a multi-part proposal] relate to some central topic, however, proposals that contemplate a variety of loosely related actions can be excluded for violating Rule 14a-8(c)." *General Motors Corporation* (April 9, 2007). See also, *Torotel, Inc.* (November 1, 2006) and *Compuware Corporation* (July 3, 2003). The component parts of the ILPF Proposals relate to a broad range of matters including compensation, bonuses, stock option grants, acceleration of equity awards, severance payments and retirement benefits. Permitting a proponent to submit any number of broad ranging proposals under the umbrella of executive compensation is contrary to Rule 14a-8 and the proxy rules generally.

Under the proxy rules, if the Corporation were presenting these seven proposals as a single proposal, the rules regarding the appropriateness of bundling voting items would be called into question. Rule 14a-5 requires that information included in a proxy statement must be "clearly presented" and the statements made shall be divided into groups according to subject matter. These seven proposals are each distinct in their application and require separate consideration by stockholders. In addition, implementation of these seven proposals will require separate and distinct actions by the Corporation.

Even if the Division cannot concur that the ILPF Proposal consists of seven different proposals, the ILPF Proposal clearly consists of more than one proposal. In the event that the Division does not concur that there are seven proposals identified above, the Corporation believes there is clearly more than one, and, accordingly, all the proposals would be excludable. See *Occidental Petroleum Corporation* (February 23, 1998) (the Division noting that "while it does not necessarily agree with the Company's assertion that the proposal contains five separate proposals, we believe that that the proposal does contain more than one proposal"). Even if the Division were to characterize the first six items listed above as relating to a single concept (i.e.,



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executive compensation/pay for performance), the seventh item, relating to a freeze on the accrual of retirement benefits under any supplemental executive retirement plan, simply cannot appropriately be characterized as executive compensation. In fact the, the AFSCME Proposal is substantially the same as the seventh proposal. The AFSCME Proposal is appropriately presented as a stand-alone proposal. As noted above, the supporting statement of the ILPF Proposals focuses primarily on compensation levels, citing to "[g]enerous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership." In addition, the ILPF Proposals cite to "serious financial losses" by shareholders as well as the Corporation's recent "financial and stock price performance" as a need for the reforms. Finally, the ILPF Proposals call "for a set of more rigorous executive compensation reforms that . . . will significantly improve the pay-for-performance features of the Company's plan."

The hold-to-retirement aspect of the proposal presents an entirely different concept and is not driven by compensation levels or pay-for-performance. As noted in the AFSCME Proposal below, the hold-to-retirement proposal serves a different purpose than compensation levels. "Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders." *AFSCME Proposal*. In addition, the hold-to retirement proposal is designed to "discourage excessive risk-taking and promote long-term, sustainable value creation." *Id.* Citing a commission of The Conference Board that supported the holding requirement, the AFSCME Proposal states that "the long-term focus promoted thereby 'may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions.'"

While the ILPF may argue that the Division's response in *AT&T Wireless Services, Inc.* (February 11, 2004) ("*AT&T*") is applicable because the Division found that a proposal requesting a wide-ranging "Commonsense Executive Compensation" program did not constitute more than one proposal, the ILPF Proposals are distinguishable. In *AT&T*, a proposal had five parts dealing with executive compensation and the supporting statement focused on excessive compensation levels. However, unlike the hold-to-retirement requirement of the ILPF Proposals, *AT&T* did not include an unrelated requirement. Accordingly, while the *AT&T* proposal arguably met the single concept test, the ILPF Proposals clearly do not.

Conclusion. Based on the forgoing, the ILPF Proposals may be omitted from the proxy materials pursuant to Rules 14a-8(c) and 14a-8(f) of the Exchange Act.



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2. Exclusion of the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the AFSCME Proposal may be excluded for the reasons set forth below.

Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division has consistently concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. *See, e.g., Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the relevant part of the ILPF Proposals is identical to the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The relevant portion of the ILPF Proposals and the AFSCME Proposal clearly address the same issue—adoption of a 75% hold-to-retirement policy. Although the ILPF Proposals include additional proposals, and in effect entirely subsume the AFSCME Proposal, the relevant portions of the two proposals differ only slightly in implementation methodology. The ILPF Proposals urge the adoption of a "strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards." The AFSCME Proposal urges the adoption of a "policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCME Proposal further recommends that the Compensation and Benefits Committee of the Corporation's Board "not adopt a percentage lower than 75% of net after-tax shares." Although there are slight variances on the specific terms of implementation, such as the references to a two-year period and "net after-tax shares" in the AFSCME Proposal, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding their slightly different terminology.



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In *Honeywell International, Inc.* (February 15, 2008) ("*Honeywell International*"), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requested that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." The Division found that the second proposal could be excluded in *Honeywell International* because it was substantially duplicative of the first proposal. As is the case with the AFSCME Proposal, which is subsumed by the ILPF Proposals, the first proposal in the *Honeywell International* letter subsumed the second proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth Corporation* (January 14, 1999) ("*BellSouth*"), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the AFSCME Proposal differ in terms of implementation methodology, they clearly address the same core issue—adoption of a 75% hold-to-retirement policy.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the AFSCME Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative



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and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. For instance, the ILPF Proposals request a different holding period upon retirement than the AFSCME Proposal. In addition, the ILPF Proposals apply to all shares obtained through equity awards, while the AFSCME Proposal applies only to net after-tax shares. The ILPF Proposals further include six other proposals that would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of relevant part of the ILPF Proposals and AFSCME Proposal are substantially the same.

If the Corporation is required to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the AFSCME Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

3. Exclusion of the Bell Proposal.

A. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(b) and 14a-8(f) because the Proponent failed to provide the requested documentary support of the Proponent's stock ownership.

The Corporation believes that the Bell Proposal may be properly omitted from its proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(b) and 14a-8(f). Pursuant to Rule 14a-8(b), a proponent must have continuously held at least \$2,000 in market value of voting securities for at least one year prior to submitting the proposal and must continue to hold those securities through the date of the meeting. Pursuant to Rule 14a-8(f), a registrant must request documentary support of the proponent's ownership within 14 calendar days of its receipt of the proposal, and the proponent must furnish such support within 14 calendar days of his or her receipt of the registrant's request.

On November 18, 2008, the Corporation received the Bell Proposal. The Corporation's stockholder records did not reflect that the Proponent was a record holder. Accordingly, by letter dated November 19, 2008, a copy of which is attached as Exhibit G, the Corporation requested, among other things, documentary support of Bell's ownership in the Corporation. The letter was sent certified mail, return receipt requested. Based on the return receipt received by the Corporation, a copy of which is attached as Exhibit H, Bell received the letter on November 26, 2008. The November 19, 2008 letter specifically referenced the 14-day deadline and provided



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the relevant portions of Rule 14a-8. In addition, the letter stated that Bell needed to provide documentary support that verified that "at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year." (emphasis added)

In response to the Corporation's request for documentary support of Bell's ownership, the Corporation received a letter dated December 1, 2008 from UBS Financial Services, Inc., Bell's broker (the "UBS Letter"). The UBS Letter is attached hereto as Exhibit I. The UBS Letter states, "Mrs. Andrea Loyd Bell is the trustee for the Harold Loyd Bypass Trust dated 11/01/99 that is held at UBS. The trust holds 7,132 Banc of America shares. The Trust has owned all of the BAC shares longer than one year."

To date, no other documentary support has been provided by Bell or UBS Financial Services, Inc.

The Corporation does not believe that the UBS Letter satisfies the documentary requirements. Under the most favorable reading of the UBS Letter, and having no reason to doubt the veracity of the UBS Letter, the Corporation can only be certain that Bell held the required amount of common stock continuously for "longer than one year" from December 1, 2008 (the date of the UBS Letter). However, there is no evidence meeting the requirements of Rule 14a-8 that verifies Bell's required ownership for one year prior to November 18, 2008 (the date the Bell Proposal was submitted). Based on the UBS Letter, there is no way to rule out the possibility that Bell acquired the her shares of common stock between November 19 and November 29, 2007, which would have made her ineligible to have submitted a proposal on November 18, 2008.

Consequently, Bell has not timely provided the required evidence to document her ownership of at least \$2,000 in market value of the Corporation's common stock continuously for at least one year prior to submitting the Bell Proposal.

The Division has consistently interpreted the procedural requirements under Rule 14a-8 strictly in finding proposals excludable. See *OCA, Inc.* (February 24, 2005) (proposal excludable where proponent submitted a statement of ownership stating he had held shares "continuously since January 8, 2004," rather than showing ownership from January 4, 2005 [sic], the date the proponent submitted his proposal); *Unocal Corporation* (February 25, 2004) (proposal excludable where proponent submitted a statement of ownership stating she held shares continuously from December 27, 2002 and not from December 9, 2003, the date of the proposal's submission); *AutoNation, Inc.* (March 14, 2002) (proposal excludable where proponent with proposal dated December 10, 2001 submitted a statement of ownership stating "he has continuously held those shares since December 12, 2000," rather than showing

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ownership from December 10, 2000); *Time Warner Inc.* (January 21, 2005) (proponent's compliance was one day late and therefore the proposal was excludable); and *Nabors Industries Ltd.* (March 8, 2005) (proponent's compliance was eight days late and therefore the proposal was excludable).

Since the Proponent failed to provide the requested documentary support of her stock ownership within the required 14-day period, she has failed to comply with the requirements of Rules 14a-8(b) and (f). Accordingly, the Proposal may properly be omitted from the Corporation's proxy materials.

- B. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(f)(2) and 14a-8(f)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal.**

Rule 14a-8(f)(2) permits a company to exclude a proposal if the proposal would cause the company to violate state law. Rule 14a-8(f)(6) permits a registrant to omit a proposal from its proxy materials if, upon passage, "the company would lack the power or authority to implement the proposal." The Bell Proposal requests that the "Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer." (emphasis added) By the terms of the Bell Proposal, long and short term compensation plans are "broadly defined" to include all plans and agreements. In addition, the Bell Proposal would prohibit the Corporation from fulfilling its legally binding obligations with respect to the payment of plan benefits for prior periods. By its terms, implementation of the Bell Proposal would violate the terms of previously granted awards under any benefit plan.

As a specific example, restricted stock units and stock options, among other forms of compensation have been issued to senior executives under the Corporation's 2003 Key Associate Stock Plan. These awards are issued pursuant to a Restricted Stock Units Award Agreement and an Stock Option Award Agreement, respectively. Each of these agreements are governed by Delaware law. With respect to currently outstanding awards under the 2003 Key Associate Stock Plan, the Corporation cannot unilaterally terminate its obligations under the awards.

The Proposal would require the Corporation to unilaterally terminate its legal obligations under outstanding Restricted Stock Units Award Agreements and an Stock Option Award Agreements, in breach of its contractual obligations to make payment on outstanding awards, all in violation of Delaware law. The Division has consistently permitted the exclusion of stockholder proposals

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ownership from December 10, 2000); *Time Warner Inc.* (January 21, 2005) (proponent's compliance was one day late and therefore the proposal was excludable); and *Nabors Industries Ltd.* (March 8, 2005) (proponent's compliance was eight days late and therefore the proposal was excludable).

Since the Proponent failed to provide the requested documentary support of her stock ownership within the required 14-day period, she has failed to comply with the requirements of Rules 14a-8(b) and (f). Accordingly, the Proposal may properly be omitted from the Corporation's proxy materials.

- B. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(f)(2) and 14a-8(f)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal.**

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The Proposal would require the Corporation to unilaterally terminate its legal obligations under outstanding Restricted Stock Units Award Agreements and an Stock Option Award Agreements, in breach of its contractual obligations to make payment on outstanding awards, all in violation of Delaware law. The Division has consistently permitted the exclusion of stockholder proposals



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pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6), and the predecessor to such rules, Rules 14a-8(c)(2) and 14a-8(c)(6), if the proposals would require the company to breach existing contractual obligations. See *NetCurrents, Inc.* (June 1, 2001); *The Goldfield Corporation* (March 28, 2001); *CoBancorp Inc.* (February 22, 1996); and *Pico Products, Inc.* (September 23, 1992).

Accordingly, it is my opinion that the implementation of the Proposal would require the Corporation to unilaterally terminate its obligations under the Restricted Stock Units Award Agreements and Stock Option Award Agreements, which would result in a breach of the Corporation's contractual obligations, in violation of Delaware law. Accordingly, the Bell Proposal is excludable under Rules 14a-8(i)(2) and 14a-8(i)(6).

C. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for a specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Bell Proposal seeks to create a direct link between long and short term incentive compensation of the named executive officers and the payment of a specific minimum dividend amount (i.e., \$0.64 per share per quarter for four consecutive quarters). The "quid pro quo" nature of the Bell Proposal, which makes long and short term incentive compensation of named executive officers dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of

remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to "a specific amount of cash dividends"); *Delmarva Power & Light Company* (February 12, 1996) (proposal calling for "no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year" and "[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share" was found excludable under Rule 14a-8(c)(13) as it "relates to a specific amount of cash dividends"); and *Delmarva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating "to specific amounts of cash dividends"). Unlike proposals seeking to establish general dividend policy, the Bell Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Bell Proposal seeks the payment of a specific dividend, namely \$0.64. As the Bell Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

- D. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.**

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Bell Proposal.



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In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Bell Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Bell Proposal similarly urges the amendment of long and short term incentive plans of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until certain targets have been met. Although there are variances in the specific terms and scope of implementation, the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards."



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The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Bell Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Bell Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Bell Proposal would impose temporary limitations on executive compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Bell Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Bell Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

4. Exclusion of the Schwartz Proposal.

A. The Corporation may omit the Schwartz Proposal pursuant to Rule 14a-8(i)(6) because it lacks the power and authority to implement the Schwartz Proposal.

Rule 14a-8(i)(6) provides that a company may omit a proposal "if the company would lack the power or authority to implement the proposal." The Schwartz Proposal cannot be implemented without consent from third parties, and the Corporation cannot compel such third parties to



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comply with the terms of the Schwartz Proposal. Accordingly, the Corporation lacks the power to implement the Schwartz Proposal.

The Schwartz Proposal recommends that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices." (emphasis added) By its terms, the only way the Schwartz Proposal can be implemented is if the "top tier management" of the Corporation "voluntarily" agrees to comply with the terms of the Schwartz Proposal. While the Corporation does have the power to request or suggest that senior executives voluntarily agree to the terms of the Schwartz Proposal, the Corporation has no power to force compliance by such persons. Merely asking for the cooperation of senior executives is not sufficient to implement the Schwartz Proposal; third parties must agree to cooperate independently.

The Commission has acknowledged that exclusion under Rule 14a-8(i)(6) may be justified where implementing the proposal would require intervening actions by independent third parties. See *Securities Exchange Act Release No. 34-40018* (May 21, 1998). The Division has consistently permitted the exclusion of stockholder proposals pursuant to Rule 14a-8(i)(6) where the proposal requires third party action or consent for their implementation. See *Catellus Development Corporation* (March 3, 2005) (proposal that company take certain actions related to property it no longer owned); *SCEcorp* (December 20, 1995) (proposal that unaffiliated fiduciary trustees amend voting agreements); *American Home Products Corp.* (February 3, 1997) (proposal requested the company provide certain warnings on its contraceptive products that were subject to government oversight and regulatory approval); and *American Electric Power Company, Inc.* (February 5, 1985) (proposal requested the completion of a nuclear plant that was jointly owned by two unaffiliated parties).

Based on the foregoing, the Corporation lacks both legal and practical authority to implement the Proposal, and, thus, the Proposal may be excluded under Rule 14a-8(i)(6).

B. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Schwartz Proposal seeks to create a direct link between salary levels, bonuses and stock option grants of top tier management of the Corporation until "the original full dividend is restored." While the Proponent does not expressly define this term, the Proponent's reference to

the Corporation's 50% cut in dividends in October 2008 indicates that the "original full dividend" refers to the dividend in effect immediately prior to the October 2008 dividend cut, which was \$0.64 per share of common stock. The "quid pro quo" nature of the Schwartz Proposal, which makes top tier management compensation dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to "a specific amount of cash dividends"); *Delmarva Power & Light Company* (February 12, 1996) (proposal calling for "no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year" and "[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share" was found excludable under Rule 14a-8(c)(13) as it "relates to a specific amount of cash dividends"); and *Delmarva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating "to specific amounts of cash dividends"). Unlike proposals seeking to establish general dividend policy, the Schwartz Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Schwartz Proposal seeks payment of a specific dividend, namely \$0.64. As the Schwartz Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

- C. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.**

The Schwartz Proposal Substantially Duplicates the ILPF Proposals. In the event that the Division does not concur with the Corporation's view that neither the ILPF Proposals nor the Bell Proposal may be excluded for the reasons set forth above, the Corporation believes that the Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Schwartz Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Schwartz Proposal similarly requests that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices" until certain targets have been met. Although there are variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for



Securities and Exchange Commission
December 23, 2008
Page 20

annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation, and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, will result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Schwartz Proposal would impose temporary limitations on executive

compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Schwartz Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

The Schwartz Proposal Substantially Duplicates the Bell Proposal. Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the Bell Proposal is identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the Bell Proposal may be excluded for the reasons set forth above, the Corporation intends to include the Bell Proposal previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The Bell Proposal and the Schwartz Proposal clearly address the same issue—limiting executive compensation. In fact, the Bell Proposal and the Schwartz Proposal are very similar in their approach.

As noted above, the Schwartz Proposal recommends that

top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.)

HUNTON & WILLIAMS

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December 23, 2008
Page 22

accept no stock options at prices less than 50% of the past all-time high stock prices . . . until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

Although there are slight variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock



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Page 23

option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the Bell Proposal and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the Bell Proposal and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the Bell Proposal and Schwartz Proposal are substantially the same.

If the Corporation is required to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the Bell Proposal that was previously submitted to the Corporation.

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposals may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

**HUNTON &
WILLIAMS**

Securities and Exchange Commission
December 23, 2008
Page 24

If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Indiana Laborers Pension Fund
American Federation of State, County & Municipal Employees
Andrea Loyd Bell
Donald M. and Judith A. Schwartz

Exhibit A

INDIANA LABORERS PENSION FUND

P.O. Box 1387 • Terre Haute, Indiana 47808-1387
Telephone 812-238-2551 • Toll Free 800-262-3155 • Fax 812-238-2555

Sent Via Fax (704) 386-6699

November 13, 2008

NOV 17 2008

Ms. Alice Herald
Deputy General Counsel and Corporate Secretary
Bank of America Corporation
100 North Tryon Street
Bank of America Corporate Center
Charlotte, NC 28255

Dear Ms. Herald,

On behalf of the Indiana Laborers Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Bank of America Corporation ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Fund is the beneficial owner of approximately 38,675 shares of the Company's common stock, which have been held continuously for more than a year prior to this date of submission. The Proposal is submitted in order to promote a governance system at the Company that enables the Board and senior management to manage the Company for the long-term, maximizing the Company's wealth generating capacity over the long-term will best serve the interests of the Company shareholders and other important constituents of the Company.

The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Jennifer O'Dell, Assistant Director of the LIUNA Department of Corporate Affairs at (202) 942-2359. Copies of correspondence or a request for a "no-action" letter should be forwarded to Ms. O'Dell at the following address: Laborers' International Union of North America, 905 16th Street, NW, Washington, DC 20006.

Sincerely,



Michael J. Short
Secretary-Treasurer

cc: Jennifer O'Dell
Enclosure

ERIC G. COOK
CHAIRMAN

OFFICERS - BOARD OF TRUSTEES

MICHAEL J. SHORT
SECRETARY-TREASURER

JANETTA E. ENGLAND
ADMINISTRATIVE MANAGER

Resolved: Given that Bank of America Corporation ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

Supporting Statement: Many Company shareholders are experiencing serious financial losses related to the problems afflicting our nation's credit markets and economy. The Company's financial and stock price performance has been challenged by these credit market events and their impact on the nation's economy. The Company's participation in the Stabilization Act's TARP is the result of these broad capital market problems and decisions made by Company senior executives.

Generous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership. Establishing renewed investor confidence in the markets and corporate leadership is a critical challenge. Congress enacted executive compensation requirements for those companies participating in the Stabilization Act's TARP. Unfortunately, we believe those executive compensation restrictions fail to adequately address the serious shortcomings of many executive compensation plans. This proposal calls for a set of more rigorous executive compensation

reforms that we believe will significantly improve the pay-for-performance features of the Company's plan and help restore investor confidence. Should existing employment agreements with Company senior executives limit the Board's ability to implement any of these reforms, the Board and its compensation committee is urged to implement the proposed reforms to the greatest extent possible. At this critically important time for the Company and our nation's economy, the benefits afforded the Company from participation in the TARP justify these more demanding executive compensation reforms.



Committee
Gerald W. McEntee
William Loy
Edward J. Keller
Kathy J. Schumann
Henry C. Schill

EMPLOYEES PENSION PLAN

November 17, 2008

VIA Overnight Mail and Telecopier (704) 386-5083

Bank of America Corporation
101 South Tryon Street, NC1-002-29-01
Charlotte, North Carolina 28255
Attention: Alice Herald, Deputy General Counsel and Corporate Secretary

Dear Ms. Herald:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2008 proxy statement of Bank of America (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2009 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 78,372 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Charles Jurgonis at (202) 429-1007.

Sincerely,

GERALD W. McENTEE
Chairman

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-8142 FAX (202) 763-4404 1625 L Street, N.W., Washington, D.C. 20036-5697

RESOLVED, that stockholders of Bank of America Corporation ("Bank of America") urge the Compensation and Benefits Committee of the Board of Directors (the "Committee") to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise), and to report to stockholders regarding the policy before Bank of America 2010 annual meeting of stockholders. The stockholders recommend that the Committee not adopt a percentage lower than 75% of net after-tax shares. The policy should address the permissibility of transactions such as hedging transactions which are not sales but reduce the risk of loss to the executive.

SUPPORTING STATEMENT

Equity-based compensation is an important component of senior executive compensation at Bank of America. According to Bank of America 2008 proxy statement, most of the total annual compensation opportunity for executive officers is provided in stock.

We believe there is a link between shareholder wealth and executive wealth that correlates to direct stock ownership by executives. According to an analysis conducted by Watson Wyatt Worldwide, companies whose CFOs held more shares generally showed higher stock returns and better operating performance. (Alix Stuart, "Skin in the Game," CFO Magazine (March 1, 2008))

Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders. In the context of the current financial crisis, we believe it is imperative that companies reshape their compensation policies and practices to discourage excessive risk-taking and promote long-term, sustainable value creation. A 2002 report by a commission of The Conference Board endorsed the idea of a holding requirement, stating that the long-term focus promoted thereby "may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions."

Bank of America has a minimum stock ownership guideline requiring directors and executives to own a certain number of shares of Bank of America stock. The directors and executives covered by the policy have five years in which to comply. We believe this policy does not go far enough to ensure that equity compensation builds executive ownership. We also view a retention requirement approach as superior to a stock ownership guideline because a guideline loses effectiveness once it has been satisfied.

We urge stockholders to vote for this proposal.

December 2, 2008

Kristin Marie Oberheu
Bank of America Corporation
NCL-002-29-01
101 South Tryon Street
Charlotte, NC 28255

Dear Ms. Oberheu:

Thank you for your response to my shareholder proposal. The information you provided was very helpful. I received your letter on November 26, 2008.

Attached please find my revised proposal which is in response to your position that my original submission actually contained multiple proposals. I would like this revised proposal to be included in the proxy statement for the 2009 Annual Meeting of Shareholders.

With regard to the "record" holder issue you will receive a letter from UBS under separate cover that should provide the information you requested. This letter was mailed from their offices in Atlanta, Ga on December 1, 2008. For your convenience I have attached a copy of the letter you will receive from UBS.

Regarding my intentions to hold the shares please consider this letter as my written statement that, in accordance with Rule 14a-8(b), it is my intention to continue to hold the shares through the date of the 2009 meeting of shareholders.

Thank you,


Andrea Loyd Bell

Harold Loyd By Pass Trust
U/W DTD 11/1/99
Andrea Loyd Bell Trustee

BANK OF AMERICA SHAREHOLDER PROPOSAL

PROPOSAL: To approve a proposal to request that the Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

SUPPORTING STATEMENT: On October 6-7, 2008 company management took deliberate actions that resulted in a significant reduction in shareholder value. These actions included offering approximately 455 million shares of common stock priced at \$22 per share which was significantly below the market value and reducing the quarterly dividend to \$0.32 from \$0.64. While these actions may be in the long term best interest of the company, it would be inconsistent and inappropriate for named executives to profit while shareholders suffer. Therefore the purpose of this proposal is to align executive's interests with those of the shareholders by requiring that no named executive officer accrues or receives any value from any variable pay arrangement until such time as the lost shareholder value has been restored.

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

November 24, 2006

Bank of America Corporation
Attn: Shareholder Relations
100 North Tryon Street
Charlotte, NC 28255

To whom it may concern:

We are shareholders in Bank of America Corporation. In our four accounts at Smith Barney we have 21,128 common shares. See enclosed Smith Barney statements (highlighted).

Enclosed please find a proposal to the shareholders of Bank of America to be included on the proxy ballot for the annual meeting next calendar year in 2009. In a recent conversation with BAC's corporate headquarters we were told such ballot questions need to be submitted by December 9, 2008 to be included. We are therefore forwarding this communication by certified mail to ensure its timely arrival.

We can be reached at the Florida address above after December 29, 2008. The telephone there is ~~_____~~ until that time we will be at ~~_____~~

*** FISMA & OMB Memorandum M-07-16 *** with telephone ~~_____~~ Please contact us with any proposed wording or format changes that may be necessary to comply with existing corporate covenants regarding such matters.

Respectfully submitted,

Donald M. Schwartz
Donald M. Schwartz
Judith A. Schwartz
Judith A. Schwartz

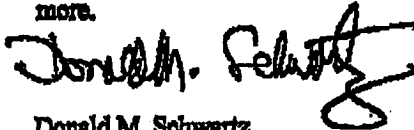
CHARLOTTE, NC
NOV 28 2006
BANK OF AMERICA
LEGAL DEPARTMENT

WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and

WHEREAS: The common stock dividend of Bank of America Corporation has been reduced by 50%, even after assurances by the president and CEO that it was safe, and

WHEREAS: Top tier management of Bank of America Corporation, must, in spite of a severe economic downturn, bear its share of the responsibility for the poor performance of the corporation,

THEREFORE, BE IT RESOLVED: That the common stockholders of Bank of America Corporation recommend that top tier management of Bank of America Corporation Voluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices. We further recommend that the voluntary actions listed above remain in effect until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs and remains above that figure for six months or more.


Donald M. Schwartz


Judith A. Schwartz



Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Indiana Laborers' Pension Fund
c/o Laborers' International Union
of North America
Attention: Ms. Jennifer O'Dell
905 16th Street NW
Washington, DC 20006

Re: Bank of America Corporation (the "Corporation")

Dear Ms. O'Dell:

On November 17, 2008, we received Indiana Laborers' Pension Fund's ("Fund") request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider the Fund's request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in the Fund's submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(e) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe the Fund has submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(e) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise the Fund's submission so that the Fund is submitting only one proposal.

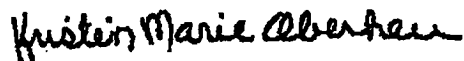
Our records do not reflect that the Fund is the "record" holder of their shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of the Fund's shares, verifying that, at the time the Fund submitted their proposal, the Fund held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our proxy statement.

Again, please note that if we do not receive the Fund's revised submission and their ownership documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our 2009 proxy statement.

In asking the Fund to provide the foregoing information, the Corporation does not relinquish its right to later object to including the Fund's proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NC1-002-29-01, 101 South Tryon Street, Charlotte, NC 28235. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment

22-Dec-2008 04:38 PM Bank of America 7043861670

Exhibit F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>x <i>Jennifer O'Dell</i></p> <p>B. Recipient's Name (Printed Name) <input type="checkbox"/> Recipient's Address</p> <p><i>Jennifer O'Dell</i></p>
<p>1. Article Addressed to:</p> <p>Indiana Laborers' Pension Fund c/o Laborers' International Union of North America Attn: Ms. Jennifer O'Dell 905 16th Street NW Washington, DC 20005</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>E. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> G.M.A.</p> <p>F. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. Article Number (Required from sender only)</p>	<p>7004 1160 0007 1426 7716</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt USPS-32-1-650</p>	

Hall

*** FISMA & OMB Memorandum M-07-16 ***

P. 2



Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Ms. Andrea Loyd Bell

*** FISMA & OMB Memorandum M-07-16 ***

Re: Bank of America Corporation (the "Corporation")

Dear Ms. Bell:

On November 18, 2008, we received your request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider your request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in your submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(e) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe you have submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(e) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise your submission so that you are submitting only one proposal.

Our records do not reflect that you are the "record" holder of your shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of your shares, verifying that, at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our proxy statement.

In addition, under Rule 14a-8(b), you must also provide us with a written statement that you intend to continue to hold your securities through the date of the 2009 annual meeting of shareholders. We must receive your written statement within 14 calendar days of your receipt of this letter.

Bank of America, N.A. 100 N. Wall Street, Charlotte, NC 28202

Legal Dept

8:11

*** FISMA & OMB Memorandum M-07-16 ***

P. 3

Again, please note that if we do not receive your revised submission, your ownership documentation or your written statement within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our 2009 proxy statement.

In asking you to provide the foregoing information, the Corporation does not relinquish its right to later object to including your proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberhen, Bank of America Corporation, NC1-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-326-7483.

Very truly yours,



Kristin Marie Oberhen, NCCP
Vice President/Senior Paralegal

Attachment

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is checked.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the envelope, or on the front if space permits.</p>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>Andrea Loyd Bell</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p><i>Andrea Loyd Bell</i></p> <p>C. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p><i>NOV 26</i></p>
<p>1. Addressee for</p> <p>Ms. Andrea Loyd Bell</p>	<p>D. Service Type</p> <p><input type="checkbox"/> Registered Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> COD</p>
<p>2. Article Number (Number from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>7004 1160 0007 1426 7709</p>	
<p>PS Form 3811, February 2004</p>	<p>Domestic Return Receipt 70286-02-000-90</p>



UBS Financial Services Inc.
1435 Peachtree Rd. NE
Suite 1700
Atlanta, GA 30309
Tel. 404-760-3312
Fax 404-760-3317
Toll Free 800-224-8333

Leonard M. Starr, CIMA®
Senior Vice President - Investments
Advisory & Brokerage Services
PRIMA Consultant
Prima Asset Consulting Program
leonard.starr@ubs.com
www.ubs.com

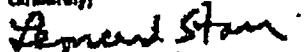
December 1, 2008

Bank of America
Kristin Marie Obazhou
101 S Tryon Street
Charlotte, NC 28285

Dear Kristin,

Mrs. Andrea Loyd Bell is the trustee for the Harold Loyd Bypass Trust dated 11/01/86 that is held at UBS. The trust holds 7,182 Bank of America shares. The Trust has covered all of the BAC shares longer than one year. If you have any questions please call me at 404-760-3000.

Sincerely,


Leonard Starr, CIMA
Senior Vice President-Investments
Advisory & Brokerage Services

cc: Andrea Loyd Bell

**HUNTON &
WILLIAMS**

EXHIBIT B

See attached.

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

November 24, 2006

Bank of America Corporation
Attn: Shareholder Relations
100 North Tryon Street
Charlotte, NC 28255

To whom it may concern:

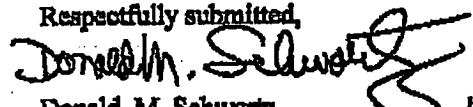
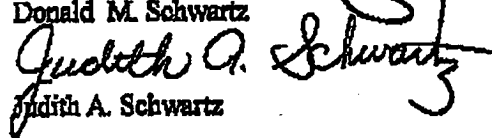
We are shareholders in Bank of America Corporation. In our four accounts at Smith Barney we have 21,128 common shares. See enclosed Smith Barney statements (highlighted).

Enclosed please also find a proposal to the shareholders of Bank of America to be included on the proxy ballot for the annual meeting next calendar year in 2009. In a recent conversation with BAC's corporate headquarters we were told such ballot questions need to be submitted by December 9, 2008 to be included. We are therefore forwarding this communication by certified mail to ensure its timely arrival.

We can be reached at the Florida address above after December 29, 2008. The telephone ~~there is~~ OMB Memorandum ~~until that time we will be at~~ *** FISMA & OMB Memorandum M-07-16 ***

*** FISMA & OMB Memorandum M-07-16 *** ~~with telephone~~ OMB Memorandum: ~~Please contact us with any proposed wording or format changes that may be necessary to comply with existing corporate covenants regarding such matters.~~

Respectfully submitted,


Donald M. Schwartz

Judith A. Schwartz

CHARLOTTE, NC
NOV 28 08
LEGAL DEPARTMENT
BANK OF AMERICA

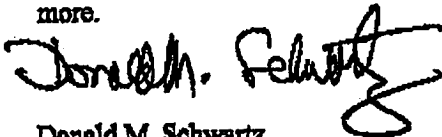
WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and

WHEREAS: The common stock dividend of Bank of America Corporation has been reduced by 50%, even after assurances by the president and CEO that it was safe, and

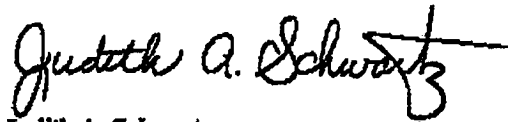
WHEREAS: Top tier management of Bank of America Corporation, must, in spite of a severe economic downturn, bear its share of the responsibility for the poor performance of the corporation,

THEREFORE, BE IT RESOLVED: That the common stockholders of Bank of America Corporation recommend that top tier management of Bank of America Corporation Voluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices.

We further recommend that the voluntary actions listed above remain in effect until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs and remains above that figure for six months or more.



Donald M. Schwartz



Judith A. Schwartz

**HUNTON &
WILLIAMS**

EXHIBIT C

See attached.



Legal Department

December 10, 2008

Delivery by Federal Express
Overnight Delivery

Mr. Donald Schwartz
Mrs. Judith Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

Re: Bank of America Corporation (the "Corporation")

Dear Mr. and Mrs. Schwartz:

On November 28, 2008, we received your request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider your request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in your submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(e) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe you have submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(e) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise your submission so that you are submitting only one proposal.

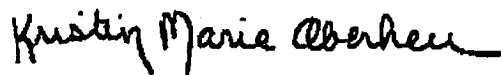
In addition, under Rule 14a-8(b), you must also provide us with a written statement that you intend to continue to hold your securities through the date of the 2009 annual meeting of shareholders. We must receive your written statement within 14 calendar days of your receipt of this letter.

Again, please note that if we do not receive your revised submission or your written statement within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our 2009 proxy statement.

In asking you to provide the foregoing information, the Corporation does not relinquish its right to later object to including your proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NC1-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment

**HUNTON &
WILLIAMS**

EXHIBIT B

See attached.

Donald and Judith Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

December 19, 2008

Kristin Marie Oberheu
Bank of America Corporation
NC1-002-29-01
101 South Tryon Street
Charlotte, NC 28255

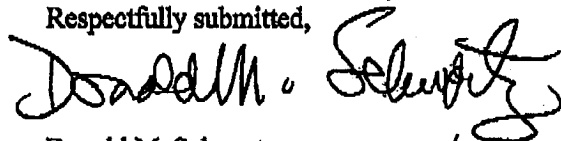
Dear Ms. Oberheu:

This is in regard to your letter of December 10, 2008. We had previously submitted a question to be placed on the proxy for the next annual meeting. You referred to our attempt to include "several stockholder proposals". There was only ONE proposal: That in light of the corporation's poor performance that top tier management should bear some of the financial burden. HOWEVER, I have included a revised proposal (included). Any further arguments along the line of "several" proposals will be referred by me to the Securities and Exchange Commission.

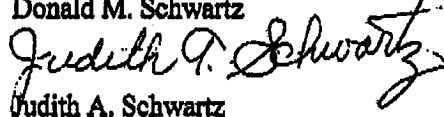
Also included with this letter is our statement that we intend to continue to hold our stock through calendar year 2009.

Also, you referred to a time limit of 14 calendar days for our reply. If you will read our original letter more closely (included), you will note that we said we would be in Pennsylvania until December 29, 2008. Since you FedEx'ed your letter to the Florida address, it took several extra days for your reply to reach us. Only an alert Florida neighbor enabled us to get your reply at all. Although you should receive this letter within the 14 days, we reserve the right to several extra days if you do not receive it in the original time frame you laid out.

Respectfully submitted,



Donald M. Schwartz



Judith A. Schwartz

REVISED QUESTION FOR PROXY BALLOT

WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and the common stock dividend has been reduced by 50%,

THEREFORE BE IT RESOLVED: That the shareholders of Bank of America Corporation recommend that top tier management of Bank Of America Corporation voluntarily and temporarily reduce their compensation in all forms by 50% until such time as the stock regains a price of 50% of its all-time highs, with full dividend restoration.

SUPPORTING STATEMENT

Top tier management of Bank of America Corporation must, in spite of the severe economic downturn, bear its share of the responsibility for the poor performance of the corporation. While many jobs in the corporation are being cut or eliminated and stockholders are suffering a massive percentage income loss, the owners of the corporation feel top management should "bite the bullet" as well.



HUNTON & WILLIAMS LLP
BANK OF AMERICA PLAZA
SUITE 3500
101 SOUTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28280

TEL 704 • 378 • 4700
FAX 704 • 378 • 4890

ANDREW A. GERBER
DIRECT DIAL: 704-378-4718
EMAIL: agerber@hunton.com

FILE NO: 46123.74

December 29, 2008

Rule 14a-8

BY ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Supplemental Letter for Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

By letter dated December 23, 2008 (the "Initial Letter"), on behalf of Bank of America Corporation (the "Corporation"), we requested confirmation that the staff of the Division of Corporation Finance (the "Division") would not recommend enforcement action if the Corporation omitted a proposal (the "Proposal") received from Donald M. and Judith A. Schwartz (the "Proponents") from its proxy materials for the 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") for the reasons set forth therein. The Initial Letter is attached hereto as **Exhibit A**.

As counsel to the Corporation, we hereby supplement the Initial Letter and request confirmation that the Division will not recommend enforcement action if the Corporation omits the Proposal from its proxy materials for the 2009 Annual Meeting for the additional reason set forth herein. This letter is intended to supplement, but does not replace, the Initial Letter.

GENERAL

A copy of the Proposal is attached hereto as **Exhibit B**. As stated in the Initial Letter, the 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the



Securities and Exchange Commission
December 29, 2008
Page 2

“Exchange Act”), enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that it may exclude the Proposal; and
2. Six copies of the Proposal.

A copy of this letter is also being sent to the Proponents as notice of the Corporation’s intention to omit the Proposal from the Corporation’s proxy materials for the 2009 Annual Meeting.

SUMMARY OF PROPOSAL

The Proposal recommends “that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices.” These actions are to remain in place “until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.”

ADDITIONAL REASON FOR EXCLUSION OF PROPOSAL

The Corporation believes that the Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(b)(2) and Rule 14a-8(f) because the Proponents have not provided a written statement indicating that they intend to hold their stock in the Corporation through the date of the 2009 Annual Meeting. Rule 14a-8(b)(2) provides that in order for the Proponents to be eligible to submit a shareholder proposal at the 2009 Annual Meeting, the Proponents must provide a written statement that they will continue to hold their securities through the date of the 2009 Annual Meeting. As described below, the Proponents did not provide the required written statement and, therefore, the Proposal may be omitted from the Corporation’s proxy materials for the 2009 Annual Meeting.

As noted above, the Proposal was received by the Corporation on November 29, 2008. The Proponents failed to state in either the Proposal or accompanying cover letter that they intend to hold their securities through the date of the 2009 Annual Meeting. The Corporation informed the Proponents, by letter dated December 10, 2008 (the “Defect Letter”), of this defect in their submission. The Defect Letter specifically requested that the Proponents provide a written statement that they intend to hold their securities through the date of the 2009 Annual Meeting. A copy of the Defect Letter is attached hereto as **Exhibit C**. The Defect Letter was sent to the Proponents by Federal Express on December 10, 2008 (a date within 14 days of the Corporation’s receipt of the Proposal). The Defect Letter clearly notified the Proponents that they had 14 calendar days from their receipt of the Defect Letter to provide the requested written statement. In addition,

HUNTON & WILLIAMS

Securities and Exchange Commission

December 29, 2008

Page 3

the Corporation provided a copy of Rule 14a-8 with the Defect Letter. According to Federal Express tracking records, a copy of which is attached hereto as **Exhibit D**, the Defect Letter was received on December 12, 2008. As of the date of this letter, the Proponents have not responded to the Defect Letter and, specifically, have not provided the required written statement that they intend to hold their securities through the date of the 2009 Annual Meeting.

The Division has consistently concluded that a shareholder proposal may be properly omitted from a company's proxy materials pursuant to Rule 14a-8(b) and Rule 14a-8(f) where the proponent failed provide the required written statement. See *Bank of America Corporation* (December 28, 2007); *Harleysville Savings Financial Corporation* (October 23, 2007); and *Viad Corp.* (March 19, 2007). Accordingly, the Proposal may be omitted from the proxy materials for the Corporation's 2009 Annual Meeting pursuant to Rule 14a-8(b) and Rule 14a-8(f).

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.

If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Donald M. and Judith A. Schwartz

**HUNTON &
WILLIAMS**

EXHIBIT A

See attached.



HUNTON & WILLIAMS LLP
BANK OF AMERICA PLAZA
SUITE 3500
101 SOUTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28280

TEL 704 • 378 • 4700
FAX 704 • 378 • 4890

ANDREW A. GERBER
DIRECT DIAL: 704-378-4718
EMAIL: agerber@hunton.com

FILE NO: 46123.74

December 23, 2008

Rule 14a-8

BY OVERNIGHT DELIVERY

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, DC 20549

Re: Stockholder Proposal Submitted by the Indiana Laborers Pension Fund
Stockholder Proposal Submitted by the American Federation of State, County &
Municipal Employees
Stockholder Proposal Submitted by Andrea Loyd Bell
Stockholder Proposal Submitted by Donald M. and Judith A. Schwartz

Ladies and Gentlemen:

Pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as counsel to Bank of America Corporation, a Delaware corporation (the "Corporation"), we request confirmation that the Staff of the Division of Corporation Finance (the "Division") will not recommend enforcement action if the Corporation omits from its proxy materials for the Corporation's 2009 Annual Meeting of Stockholders (the "2009 Annual Meeting") the proposal described below for the reasons set forth herein. The statements of fact included herein represent our understanding of such facts.

GENERAL

The Corporation received: (i) several proposals and a supporting statement dated November 13, 2008 (the "ILPF Proposals") from the Indiana Laborers Pension Fund (the "ILPF"), (ii) a proposal and supporting statement dated November 17, 2008 (the "AFSCME Proposals") from the American Federation of State, County & Municipal Employees ("AFSCME"), (iii) a revised proposal and supporting statement dated December 2, 2008 (the "Bell Proposal") from Andrea Loyd Bell ("Bell") and (iv) a proposal and supporting statement dated November 24, 2008 (the "Schwartz Proposal") from Donald M. and Judith A. Schwartz ("Schwartz" and ILPF, AFSCME, Bell and Schwartz each a "Proponent") for inclusion in the proxy materials for the 2009 Annual



Securities and Exchange Commission
December 23, 2008
Page 2

Meeting. The ILPF Proposals, the AFSCME Proposal, the Bell Proposal and the Schwartz Proposal (collectively, the "Proposals") are attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D, respectively. The 2009 Annual Meeting is scheduled to be held on or about April 29, 2009. The Corporation intends to file its definitive proxy materials with the Securities and Exchange Commission (the "Commission") on or about March 18, 2009.

Pursuant to Rule 14a-8(j) promulgated under the Exchange Act, enclosed are:

1. Six copies of this letter, which includes an explanation of why the Corporation believes that it may exclude the Proposals; and
2. Six copies of the Proposals.

With respect to Section 3.B. below, this letter shall also serve as my opinion of counsel. I am licensed to practice law in the States of North Carolina and Maryland.

A copy of this letter is also being sent to each Proponent as notice of the Corporation's intent to omit the Proposals from the Corporation's proxy materials for the 2009 Annual Meeting.

SUMMARY OF THE PROPOSALS

The ILPF Proposals

The ILPF Proposals urge the Board of Directors and its compensation committee to implement the following "*set of executive compensation reforms* that impose important limitations on senior executive compensation" (emphasis added):

- limits on target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- a freeze on new stock option awards, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- adoption of an equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;



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December 23, 2008
Page 3

- prohibition of accelerated vesting for all unvested equity awards;
- limits on all severance payments to an amount no greater than one times annual salary; and
- a freeze on the accrual of retirement benefits under any supplemental executive retirement plan.

The ILPF Proposals were received by the Corporation via certified mail on the morning of November 17, 2008.

The AFSCME Proposal

The AFSCME Proposal urges the Compensation and Benefits Committee of the Board of Directors (the "Committee") "to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCME Proposal further recommends that the Committee "not adopt a percentage lower than 75% of net after-tax shares." The AFSCME Proposal was received by the Corporation by facsimile on November 17, 2008 at 5:54 p.m. Eastern Standard Time.

The Bell Proposal

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

The Bell Proposal was originally received by the Corporation on November 18, 2008 and was subsequently revised on December 2, 2008.



Securities and Exchange Commission
December 23, 2008
Page 4

The Schwartz Proposal

The Schwartz Proposal recommends “that top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices.” These actions are to remain in place “until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.” The Schwartz Proposal was received by the Corporation on November 28, 2008.

REASONS FOR EXCLUSION OF PROPOSALS

- 1. The ILPF Proposals**—The Corporation believes that the ILPF Proposals may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(c) because the ILPF has violated the one proposal limitation.
- 2. The AFSCME Proposal**—In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the AFSCME Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the AFSCME Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation’s proxy materials for the 2009 Annual Meeting.
- 3. The Bell Proposal**—The Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to (i) Rule 14a-8(b) and (f) because Bell has failed, upon timely request, to provide the required ownership information to establish eligibility to submit a proposal under Rule 14a-8 and (ii) Rule 14a-8(i)(13) because the Bell Proposal relates to a specific amount of dividends. In addition, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal. In the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Bell Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Bell Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation’s proxy materials for the 2009 Annual Meeting.
- 4. The Schwartz Proposal**—The Corporation believes that the Schwartz Proposal may be excluded pursuant to (i) Rule 14a-8(i)(6) because the Corporation lacks the power and authority



Securities and Exchange Commission
December 23, 2008
Page 5

to implement the Schwartz Proposal and (ii) Rule 14a-8(i)(13) because the Schwartz Proposal relates to a specific amount of dividends. In addition, in the event that the ILPF Proposals are not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the ILPF Proposals) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting. Finally, in the event that the Bell Proposal is not found to be excludable by the Division, the Corporation believes that the Schwartz Proposal may be properly omitted from the proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because the Schwartz Proposal substantially duplicates a prior proposal (i.e., the Bell Proposal) that will be included in the Corporation's proxy materials for the 2009 Annual Meeting.

1. Exclusion of the ILPF Proposals.

The ILPF Proposal consists of seven different proposals. Rule 14a-8(c) provides that each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. The Rule further provides that a stockholder may comply with the rule by reducing the number of proposals to one within 14 days from notification of the defect by the company. Notwithstanding the fact that the ILPF has framed its request in terms of one shareholder resolution, the ILPF Proposals submitted by the ILPF violate Rule 14a-8(c) because they consist of more than one proposal and, in fact, constitute as many as seven separate proposals. The ILPF Proposals were received by the Corporation on November 17, 2008. By letter dated November 19, 2008, the Corporation notified the ILPF that its submission violated Rule 14a-8(c) and requested that a revised proposal be submitted to the Corporation within 14 days of the ILPF's receipt of the letter. A copy of the November 19, 2008 letter is attached hereto as Exhibit E, and the evidence of the ILPF's receipt of such letter on November 25, 2008 is attached as Exhibit F. As of the date of this letter, the ILPF has failed to respond to the request.

The ILPF has acknowledged that the ILPF Proposals represent more than one request by requesting that the Corporation include the "set" of "reforms" and by setting forth the ILPF Proposals in seven separate bullet points. The Division has consistently taken the position that substantially distinct proposals may not be considered a single proposal for purposes of Rule 14a-8(c). See *Fotoball, Inc.* (May 6, 1997) (proposals relating to a minimum share ownership of directors, form of director compensation and business relationships between an issuer and its non-employee directors constitute multiple proposals) and *American Electric Power Company, Inc.* (January 2, 2001) (proposals relating to tenure, meetings and compensation of the board constitute multiple proposals). In certain circumstances, the Division has taken the position that multiple proposals will be deemed to constitute one proposal if they are related to a single, well-defined unifying concept. See *Securities Exchange Act Release No. 12999* (November 22,

1976). Unlike the proposals set forth in *Computer Horizons Corp.* (April 1, 1993) (proposals unified by the concept of the elimination of takeover defenses), the ILPF Proposals represent more than a single, well defined unifying concept. As a result, the Corporation believes that it may exclude the ILPF Proposals in accordance with Rule 14a-8(f)(1) because of the ILPF's failure to comply with Rule 14a-8(c).

Although the ILPF Proposals are packaged as a "set of executive compensation reforms," they address multiple concepts that are not well defined, including both compensation matters and corporate governance matters. The ILPF Proposals seek to (1) limit target annual incentive compensation, (2) require that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, (3) freeze new stock option awards, (4) impose a 75% "hold-to-retirement" policy on shares of stock obtained through equity awards, (5) prohibit accelerated vesting for all unvested equity awards, (6) limit severance payments and (7) freeze accrual of retirement benefits under supplemental executive retirement plans. The Division has found that even "where the components [of a multi-part proposal] relate to some central topic, however, proposals that contemplate a variety of loosely related actions can be excluded for violating Rule 14a-8(c)." *General Motors Corporation* (April 9, 2007). *See also, Torotel, Inc.* (November 1, 2006) and *Compuware Corporation* (July 3, 2003). The component parts of the ILPF Proposals relate to a broad range of matters including compensation, bonuses, stock option grants, acceleration of equity awards, severance payments and retirement benefits. Permitting a proponent to submit any number of broad ranging proposals under the umbrella of executive compensation is contrary to Rule 14a-8 and the proxy rules generally.

Under the proxy rules, if the Corporation were presenting these seven proposals as a single proposal, the rules regarding the appropriateness of bundling voting items would be called into question. Rule 14a-5 requires that information included in a proxy statement must be "clearly presented" and the statements made shall be divided into groups according to subject matter. These seven proposals are each distinct in their application and require separate consideration by stockholders. In addition, implementation of these seven proposals will require separate and distinct actions by the Corporation.

Even if the Division cannot concur that the ILPF Proposal consists of seven different proposals, the ILPF Proposal clearly consists of more than one proposal. In the event that the Division does not concur that there are seven proposals identified above, the Corporation believes there is clearly more than one, and, accordingly, all the proposals would be excludable. *See Occidental Petroleum Corporation* (February 23, 1998) (the Division noting that "while it does not necessarily agree with the Company's assertion that the proposal contains five separate proposals, we believe that that the proposal does contain more than one proposal"). Even if the Division were to characterize the first six items listed above as relating to a single concept (i.e.,

executive compensation/pay for performance), the seventh item, relating to a freeze on the accrual of retirement benefits under any supplemental executive retirement plan, simply cannot appropriately be characterized as executive compensation. In fact the, the AFSCME Proposal is substantially the same as the seventh proposal. The AFSCME Proposal is appropriately presented as a stand-alone proposal. As noted above, the supporting statement of the ILPF Proposals focuses primarily on compensation levels, citing to "[g]enerous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership." In addition, the ILPF Proposals cite to "serious financial losses" by shareholders as well as the Corporation's recent "financial and stock price performance" as a need for the reforms. Finally, the ILPF Proposals call "for a set of more rigorous executive compensation reforms that . . . will significantly improve the pay-for-performance features of the Company's plan."

The hold-to-retirement aspect of the proposal presents an entirely different concept and is not driven by compensation levels or pay-for-performance. As noted in the AFSCME Proposal below, the hold-to-retirement proposal serves a different purpose than compensation levels. "Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders." *AFSCME Proposal*. In addition, the hold-to retirement proposal is designed to "discourage excessive risk-taking and promote long-term, sustainable value creation." *Id.* Citing a commission of The Conference Board that supported the holding requirement, the AFSCME Proposal states that "the long-term focus promoted thereby 'may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions.'"

While the ILPF may argue that the Division's response in *AT&T Wireless Services, Inc.* (February 11, 2004) ("*AT&T*") is applicable because the Division found that a proposal requesting a wide-ranging "Commonsense Executive Compensation" program did not constitute more than one proposal, the ILPF Proposals are distinguishable. In *AT&T*, a proposal had five parts dealing with executive compensation and the supporting statement focused on excessive compensation levels. However, unlike the hold-to-retirement requirement of the ILPF Proposals, *AT&T* did not include an unrelated requirement. Accordingly, while the *AT&T* proposal arguably met the single concept test, the ILPF Proposals clearly do not.

Conclusion. Based on the forgoing, the ILPF Proposals may be omitted from the proxy materials pursuant to Rules 14a-8(c) and 1.4a-8(f) of the Exchange Act.

2. Exclusion of the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the AFSCME Proposal may be excluded for the reasons set forth below.

Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division has consistently concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. *See, e.g., Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the relevant part of the ILPF Proposals is identical to the AFSCME Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The relevant portion of the ILPF Proposals and the AFSCME Proposal clearly address the same issue—adoption of a 75% hold-to-retirement policy. Although the ILPF Proposals include additional proposals, and in effect entirely subsume the AFSCME Proposal, the relevant portions of the two proposals differ only slightly in implementation methodology. The ILPF Proposals urge the adoption of a "strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards." The AFSCME Proposal urges the adoption of a "policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise)." The AFSCME Proposal further recommends that the Compensation and Benefits Committee of the Corporation's Board "not adopt a percentage lower than 75% of net after-tax shares." Although there are slight variances on the specific terms of implementation, such as the references to a two-year period and "net after-tax shares" in the AFSCME Proposal, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding their slightly different terminology.

In *Honeywell International, Inc.* (February 15, 2008) ("*Honeywell International*"), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requested that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." The Division found that the second proposal could be excluded in *Honeywell International* because it was substantially duplicative of the first proposal. As is the case with the AFSCME Proposal, which is subsumed by the ILPF Proposals, the first proposal in the *Honeywell International* letter subsumed the second proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth Corporation* (January 14, 1999) ("*BellSouth*"), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the AFSCME Proposal differ in terms of implementation methodology, they clearly address the same core issue— adoption of a 75% hold-to-retirement policy.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the AFSCME Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative



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and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. For instance, the ILPF Proposals request a different holding period upon retirement than the AFSCME Proposal. In addition, the ILPF Proposals apply to all shares obtained through equity awards, while the AFSCME Proposal applies only to net after-tax shares. The ILPF Proposals further include six other proposals that would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of relevant part of the ILPF Proposals and AFSCME Proposal are substantially the same.

If the Corporation is required to include the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the AFSCME Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

3. Exclusion of the Bell Proposal.

- A. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(b) and 14a-8(f) because the Proponent failed to provide the requested documentary support of the Proponent's stock ownership.**

The Corporation believes that the Bell Proposal may be properly omitted from its proxy materials for the 2009 Annual Meeting pursuant to Rules 14a-8(b) and 14a-8(f). Pursuant to Rule 14a-8(b), a proponent must have continuously held at least \$2,000 in market value of voting securities for at least one year prior to submitting the proposal and must continue to hold those securities through the date of the meeting. Pursuant to Rule 14a-8(f), a registrant must request documentary support of the proponent's ownership within 14 calendar days of its receipt of the proposal, and the proponent must furnish such support within 14 calendar days of his or her receipt of the registrant's request.

On November 18, 2008, the Corporation received the Bell Proposal. The Corporation's stockholder records did not reflect that the Proponent was a record holder. Accordingly, by letter dated November 19, 2008, a copy of which is attached as Exhibit G, the Corporation requested, among other things, documentary support of Bell's ownership in the Corporation. The letter was sent certified mail, return receipt requested. Based on the return receipt received by the Corporation, a copy of which is attached as Exhibit H, Bell received the letter on November 26, 2008. The November 19, 2008 letter specifically referenced the 14-day deadline and provided



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the relevant portions of Rule 14a-8. In addition, the letter stated that Bell needed to provide documentary support that verified that "at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year." (emphasis added)

In response to the Corporation's request for documentary support of Bell's ownership, the Corporation received a letter dated December 1, 2008 from UBS Financial Services, Inc., Bell's broker (the "UBS Letter"). The UBS Letter is attached hereto as Exhibit I. The UBS Letter states, "Mrs. Andrea Loyd Bell is the trustee for the Harold Loyd Bypass Trust dated 11/01/99 that is held at UBS. The trust holds 7,132 Banc of America shares. The Trust has owned all of the BAC shares longer than one year."

To date, no other documentary support has been provided by Bell or UBS Financial Services, Inc.

The Corporation does not believe that the UBS Letter satisfies the documentary requirements. Under the most favorable reading of the UBS Letter, and having no reason to doubt the veracity of the UBS Letter, the Corporation can only be certain that Bell held the required amount of common stock continuously for "longer than one year" from December 1, 2008 (the date of the UBS Letter). However, there is no evidence meeting the requirements of Rule 14a-8 that verifies Bell's required ownership for one year prior to November 18, 2008 (the date the Bell Proposal was submitted). Based on the UBS Letter, there is no way to rule out the possibility that Bell acquired the her shares of common stock between November 19 and November 29, 2007, which would have made her ineligible to have submitted a proposal on November 18, 2008.

Consequently, Bell has not timely provided the required evidence to document her ownership of at least \$2,000 in market value of the Corporation's common stock continuously for at least one year prior to submitting the Bell Proposal.

The Division has consistently interpreted the procedural requirements under Rule 14a-8 strictly in finding proposals excludable. See *OCA, Inc.* (February 24, 2005) (proposal excludable where proponent submitted a statement of ownership stating he had held shares "continuously since January 8, 2004," rather than showing ownership from January 4, 2005 [sic], the date the proponent submitted his proposal); *Unocal Corporation* (February 25, 2004) (proposal excludable where proponent submitted a statement of ownership stating she held shares continuously from December 27, 2002 and not from December 9, 2003, the date of the proposal's submission); *AutoNation, Inc.* (March 14, 2002) (proposal excludable where proponent with proposal dated December 10, 2001 submitted a statement of ownership stating "he has continuously held those shares since December 12, 2000," rather than showing

ownership from December 10, 2000); *Time Warner Inc.* (January 21, 2005) (proponent's compliance was one day late and therefore the proposal was excludable); and *Nabors Industries Ltd.* (March 8, 2005) (proponent's compliance was eight days late and therefore the proposal was excludable).

Since the Proponent failed to provide the requested documentary support of her stock ownership within the required 14-day period, she has failed to comply with the requirements of Rules 14a-8(b) and (f). Accordingly, the Proposal may properly be omitted from the Corporation's proxy materials.

B. The Corporation may omit the Bell Proposal pursuant to Rules 14a-8(f)(2) and 14a-8(i)(6) because the Bell Proposal, if implemented, would cause the Corporation to violate Delaware law, and, accordingly, the Corporation lacks the authority to implement the Proposal.

Rule 14a-8(i)(2) permits a company to exclude a proposal if the proposal would cause the company to violate state law. Rule 14a-8(i)(6) permits a registrant to omit a proposal from its proxy materials if, upon passage, "the company would lack the power or authority to implement the proposal." The Bell Proposal requests that the "Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer." (emphasis added) By the terms of the Bell Proposal, long and short term compensation plans are "broadly defined" to include all plans and agreements. In addition, the Bell Proposal would prohibit the Corporation from fulfilling its legally binding obligations with respect to the payment of plan benefits for prior periods. By its terms, implementation of the Bell Proposal would violate the terms of previously granted awards under any benefit plan.

As a specific example, restricted stock units and stock options, among other forms of compensation have been issued to senior executives under the Corporation's 2003 Key Associate Stock Plan. These awards are issued pursuant to a Restricted Stock Units Award Agreement and an Stock Option Award Agreement, respectively. Each of these agreements are governed by Delaware law. With respect to currently outstanding awards under the 2003 Key Associate Stock Plan, the Corporation cannot unilaterally terminate its obligations under the awards.

The Proposal would require the Corporation to unilaterally terminate its legal obligations under outstanding Restricted Stock Units Award Agreements and an Stock Option Award Agreements, in breach of its contractual obligations to make payment on outstanding awards, all in violation of Delaware law. The Division has consistently permitted the exclusion of stockholder proposals

pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6), and the predecessor to such rules, Rules 14a-8(c)(2) and 14a-8(c)(6), if the proposals would require the company to breach existing contractual obligations. See *NetCurrents, Inc.* (June 1, 2001); *The Goldfield Corporation* (March 28, 2001); *CoBancorp Inc.* (February 22, 1996); and *Pico Products, Inc.* (September 23, 1992).

Accordingly, it is my opinion that the implementation of the Proposal would require the Corporation to unilaterally terminate its obligations under the Restricted Stock Units Award Agreements and Stock Option Award Agreements, which would result in a breach of the Corporation's contractual obligations, in violation of Delaware law. Accordingly, the Bell Proposal is excludable under Rules 14a-8(i)(2) and 14a-8(i)(6).

C. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for a specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Bell Proposal seeks to create a direct link between long and short term incentive compensation of the named executive officers and the payment of a specific minimum dividend amount (i.e., \$0.64 per share per quarter for four consecutive quarters). The "quid pro quo" nature of the Bell Proposal, which makes long and short term incentive compensation of named executive officers dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of

remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to "a specific amount of cash dividends"); *Delmarva Power & Light Company* (February 12, 1996) (proposal calling for "no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year" and "[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share" was found excludable under Rule 14a-8(c)(13) as it "relates to a specific amount of cash dividends"); and *Delmarva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating "to specific amounts of cash dividends"). Unlike proposals seeking to establish general dividend policy, the Bell Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Bell Proposal seeks the payment of a specific dividend, namely \$0.64. As the Bell Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

D. The Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation believes that the Bell Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Bell Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Bell Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Bell Proposal similarly urges the amendment of long and short term incentive plans of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until certain targets have been met. Although there are variances in the specific terms and scope of implementation, the two proposals share the same "principal thrust" or "principal focus," and are, thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards."

The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Bell Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Bell Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Bell Proposal would impose temporary limitations on executive compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Bell Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Bell Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

4. Exclusion of the Schwartz Proposal.

A. The Corporation may omit the Schwartz Proposal pursuant to Rule 14a-8(i)(6) because it lacks the power and authority to implement the Schwartz Proposal.

Rule 14a-8(i)(6) provides that a company may omit a proposal "if the company would lack the power or authority to implement the proposal." The Schwartz Proposal cannot be implemented without consent from third parties, and the Corporation cannot compel such third parties to



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comply with the terms of the Schwartz Proposal. Accordingly, the Corporation lacks the power to implement the Schwartz Proposal.

The Schwartz Proposal recommends that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices." (emphasis added) By its terms, the only way the Schwartz Proposal can be implemented is if the "top tier management" of the Corporation "voluntarily" agrees to comply with the terms of the Schwartz Proposal. While the Corporation does have the power to request or suggest that senior executives voluntarily agree to the terms of the Schwartz Proposal, the Corporation has no power to force compliance by such persons. Merely asking for the cooperation of senior executives is not sufficient to implement the Schwartz Proposal; third parties must agree to cooperate independently.

The Commission has acknowledged that exclusion under Rule 14a-8(i)(6) may be justified where implementing the proposal would require intervening actions by independent third parties. *See Securities Exchange Act Release No. 34-40018* (May 21, 1998). The Division has consistently permitted the exclusion of stockholder proposals pursuant to Rule 14a-8(i)(6) where the proposal requires third party action or consent for their implementation. *See Catellus Development Corporation* (March 3, 2005) (proposal that company take certain actions related to property it no longer owned); *SCEcorp* (December 20, 1995) (proposal that unaffiliated fiduciary trustees amend voting agreements); *American Home Products Corp.* (February 3, 1997) (proposal requested the company provide certain warnings on its contraceptive products that were subject to government oversight and regulatory approval); and *American Electric Power Company, Inc.* (February 5, 1985) (proposal requested the completion of a nuclear plant that was jointly owned by two unaffiliated parties).

Based on the foregoing, the Corporation lacks both legal and practical authority to implement the Proposal, and, thus, the Proposal may be excluded under Rule 14a-8(i)(6).

B. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(13) because it calls for specific amount of cash or stock dividends.

Rule 14a-8(i)(13), and its predecessor Rule 14a-8(c)(13), provides that a shareholder proposal is excludable if it relates to specific amounts of cash or stock dividends.

The Schwartz Proposal seeks to create a direct link between salary levels, bonuses and stock option grants of top tier management of the Corporation until "the original full dividend is restored." While the Proponent does not expressly define this term, the Proponent's reference to

the Corporation's 50% cut in dividends in October 2008 indicates that the "original full dividend" refers to the dividend in effect immediately prior to the October 2008 dividend cut, which was \$0.64 per share of common stock. The "quid pro quo" nature of the Schwartz Proposal, which makes top tier management compensation dependent on a specific quarterly dividend payment of at least \$0.64 per share, conflicts directly with Rule 14a-8(i)(13)'s prohibition on shareholder proposals seeking specific dividends. The Division has consistently held shareholder proposals that seek to directly link increases in executive compensation to increases in dividends, whether directly or pursuant to a formula, excludable under Rule 14a-8(i)(13). For instance, the Division found the proposal in *Xcel Energy, Inc.* (March 14, 2003) excludable pursuant to Rule 14a-8(i)(13) where the proponent requested (i) a reduction in and cap of senior management salaries, with such salaries to only be incrementally increased based upon percentage increases in the common stock dividend and (ii) a suspension of stock options and bonuses until the dividend per share was restored to \$1.50. Further, in *Banknorth Group, Inc.* (February 16, 1995) ("*Banknorth*"), a proposal called for "[n]o bonuses, stock awards, options or other forms of incentive compensation [to] be awarded to the Company's officers so long as the annual dividend to shareholders remains less than the amount \$1.08 per share paid in 1990." The Division found the *Banknorth* proposal excludable pursuant to Rule 14a-8(c)(13) "as a matter relating to specific amounts of cash or stock dividends." In *Central Vermont Public Service Corporation* (November 30, 1995), the Division found a proposal "to restore the dividend to 35.5 cents a quarter" excludable "under Rule 14a-8(c)(13) as a matter relating to specific amounts of cash or stock dividends." See also *Echlin, Inc.* (October 16, 1995) (proposal requesting the freezing of remuneration under certain incentive compensation, profit sharing and bonus plans until the cash dividend was increased by 50% found excludable pursuant to Rule 14a-8(c)(13) as relating to "a specific amount of cash dividends"); *Delmarva Power & Light Company* (February 12, 1996) (proposal calling for "no pay raises (nor cost of living raises) to the Board of Director [sic] or the top twenty(20) [sic] executives of the Company in any year that dividends are not increased by at least one cent (\$0.01) per common share for that year" and "[n]o bonuses . . . unless the dividend has increased by two cents (\$0.02) per share" was found excludable under Rule 14a-8(c)(13) as it "relates to a specific amount of cash dividends"); and *Delmarva Power and Light Company* (February 21, 1995) (proposal requesting in part that increases in salary and/or compensation of senior executives and directors be no greater than the increase in common stock dividends was found excludable pursuant to Rule 14a-8(c)(13) as relating "to specific amounts of cash dividends"). Unlike proposals seeking to establish general dividend policy, the Schwartz Proposal, like the precedent discussed above, seeks a specific amount of dividends and uses executive compensation as leverage to get such dividends.

At its core, the Schwartz Proposal seeks payment of a specific dividend, namely \$0.64. As the Schwartz Proposal relates to a specific amount of dividends, it is properly excludable pursuant to Rule 14a-8(i)(13).

C. The Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it substantially duplicates another proposal, which was previously submitted to the Corporation and will be included in the proxy materials for the 2009 Annual Meeting.

The Schwartz Proposal Substantially Duplicates the ILPF Proposals. In the event that the Division does not concur with the Corporation's view that neither the ILPF Proposals nor the Bell Proposal may be excluded for the reasons set forth above, the Corporation believes that the Schwartz Proposal may be excluded pursuant to Rule 14a-8(i)(11). Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the ILPF Proposals are the identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the ILPF Proposals may be excluded for the reasons set forth above, the Corporation intends to include the ILPF Proposals previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The ILPF Proposals and the Schwartz Proposal clearly address the same issue—limiting executive compensation. The ILPF Proposals urge a set of reforms, most of which seek to limit the level of executive compensation, including among other things, limits on bonuses, equity awards, severance and retirement benefits. The Schwartz Proposal similarly requests that "top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of the past all-time high stock prices" until certain targets have been met. Although there are variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for

annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation, and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the ILPF Proposals and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the ILPF Proposals and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, will result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The ILPF Proposals do not require that any dividend or stock price targets be satisfied and represent a general and permanent policy change to limit compensation. However, the Schwartz Proposal would impose temporary limitations on executive

compensation that would end once the proposed dividend and stock price targets were satisfied. Further, the ILPF Proposals include one additional proposal that is not related to limiting executive compensation but which would need to be implemented if approved. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the ILPF Proposals and Schwartz Proposal are substantially the same.

If the Corporation is required to approve the ILPF Proposals in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the ILPF Proposals that were previously submitted to the Corporation.

The Schwartz Proposal Substantially Duplicates the Bell Proposal. Rule 14a-8(i)(11) permits the exclusion from the Corporation's proxy materials of a stockholder proposal that substantially duplicates another proposal previously submitted by another proponent that will be included in the Corporation's proxy materials for the same meeting. Proposals do not need to be identical to be excluded pursuant to Rule 14a-8(i)(11). The Commission has stated that the exclusion is intended to "eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." See *Securities Exchange Act Release No. 34-12598* (July 7, 1976). The Division consistently has concluded that proposals may be excluded because they are substantially duplicative when such proposals have the same "principal thrust" or "principal focus," notwithstanding that such proposals may differ as to terms and scope. See, e.g., *Pacific Gas & Electric Co.* (February 1, 1993). As discussed below, the principle thrust of the Bell Proposal is identical to the Schwartz Proposal.

In the event that the Division does not concur with the Corporation's view that the Bell Proposal may be excluded for the reasons set forth above, the Corporation intends to include the Bell Proposal previously submitted by another proponent in its proxy materials for the 2009 Annual Meeting. The Bell Proposal and the Schwartz Proposal clearly address the same issue—limiting executive compensation. In fact, the Bell Proposal and the Schwartz Proposal are very similar in their approach.

As noted above, the Schwartz Proposal recommends that

top tier management of Bank of America Corporation [v]oluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.)



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Page 22

accept no stock options at prices less than 50% of the past all-time high stock prices . . . until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs [sic] and remains above that figure for six months or more.

The Bell Proposal requests that the

Board of Directors amend the long and short term incentive plans . . . of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

Although there are slight variances on the specific terms and scope of implementation, it seems fairly clear that the two proposals share the same "principal thrust" or "principal focus," and are thus, substantially duplicative, notwithstanding that they slightly differ as to terms.

In *Honeywell International* (see above), the first proposal requested the adoption of a five part "executive compensation plan" that included: (1) the establishment of compensation targets for annual and long-term incentive pay components at or below the peer group median, (2) that majority of target long-term compensation be paid through performance vested, not simply time vested, equity awards, (3) strategic rationale and relative weighting of financial and non-financial performance metrics, (4) established performance targets for each financial metric relative to the performance of peer companies and (5) limits on the payments under the annual and performance-vested long-term incentive components to when the company's performance metrics exceeds peer group median performance. The second proposal requesting that "75% of future equity compensation (stock options and restricted stock) awarded to senior executives shall be performance-based." In *Honeywell International*, the Division found that the second proposal could be excluded because it was substantially duplicative of the first proposal. See also, *Wyeth* (January 21, 2005) (the second proposal was subsumed by the first proposal and was found to be substantially duplicative).

The Division has a long history of concluding that even substantive differences in implementation methodology do not alter the core issues and principals that are the standard for determining substantial duplication. In *Centerior Energy Corporation* (February 27, 1995), four compensation-related proposals were submitted as follows: (1) place ceilings on executives' compensation, tie compensation to the company's future performance and cease bonus and stock



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Page 23

option awards, (2) freeze executive compensation, (3) reduce management size, reduce executive compensation and eliminate bonuses and (4) freeze annual salaries and eliminate bonuses. Centerior argued that "all of the . . . proposals have as their principal thrust the limitation of compensation and, directly or indirectly, linking such limits to certain performance standards." The Division concurred that the four Centerior proposals were substantially duplicative. In *BellSouth* (see above), the first proposal requested that all incentive awards be "tied proportionately to the revenue growth at the end of the year." The second *BellSouth* proposal requested that all incentive awards be "tied proportionately to the price of the stock at the end of the year." The Division concurred that the *BellSouth* proposals were substantially duplicative. See also, *Pacific Gas & Electric Company* (February 1, 1993). As with the proposals discussed above, while the Bell Proposal and the Schwartz Proposal differ in terms of implementation methodology, they clearly address the same core issue and principal—limitations on executive compensation.

In addition, the Corporation believes the inclusion of the Bell Proposal and the Schwartz Proposal in the Corporation's proxy materials for the 2009 Annual Meeting would be confusing to stockholders and, if both Proposals were approved by stockholders, would result in alternative and inconsistent obligations being imposed on the Corporation in order to achieve each Proposal's desired result. The Corporation should not be required to include multiple proposals where, if each were approved, the Board of Directors would have no way of knowing which approach the stockholders prefer, nor would the Board of Directors be able to fully implement each Proposal due to inconsistent or conflicting provisions. Although their implementation is somewhat different, the core issues of the Bell Proposal and Schwartz Proposal are substantially the same.

If the Corporation is required to include the Bell Proposal in its proxy materials for the 2009 Annual Meeting, the Schwartz Proposal may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of the Bell Proposal that was previously submitted to the Corporation.

CONCLUSION

On the basis of the foregoing and on behalf of the Corporation, we respectfully request the concurrence of the Division that the Proposals may be excluded from the Corporation's proxy materials for the 2009 Annual Meeting. Based on the Corporation's timetable for the 2009 Annual Meeting, a response from the Division by February 3, 2009 would be of great assistance.


**HUNTON &
WILLIAMS**

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If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at 704-378-4718 or, in my absence, Teresa M. Brenner, Associate General Counsel of the Corporation, at 704-386-4238.

Please acknowledge receipt of this letter by stamping and returning the enclosed receipt copy of this letter. Thank you for your prompt attention to this matter.

Very truly yours,



Andrew A. Gerber

cc: Teresa M. Brenner
Indiana Laborers Pension Fund
American Federation of State, County & Municipal Employees
Andrea Loyd Bell
Donald M. and Judith A. Schwartz

Exhibit A

INDIANA LABORERS PENSION FUND

P.O. Box 1567 • Terre Haute, Indiana 47808-1567
Telephone 812-238-2551 • Toll Free 800-962-3158 • Fax 812-238-2553

Sent Via Fax (704) 386-6699

November 13, 2008

NOV 17 2008

Ms. Alice Herald
Deputy General Counsel and Corporate Secretary
Bank of America Corporation
100 North Tryon Street
Bank of America Corporate Center
Charlotte, NC 28255

Dear Ms. Herald,

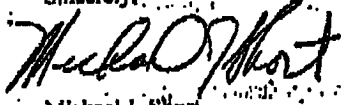
On behalf of the Indiana Laborers Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Bank of America Corporation ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Fund is the beneficial owner of approximately 38,675 shares of the Company's common stock which have been held continuously for more than a year prior to this date of submission. The Proposal is submitted in order to promote a governance system at the Company that enables the Board and senior management to manage the Company for the long-term. Maximizing the Company's wealth generating capacity over the long-term will best serve the interests of the Company shareholders and other important constituents of the Company.

The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Jennifer O'Dell, Assistant Director of the LIUNA Department of Corporate Affairs at (202) 942-2359. Copies of correspondence or a request for a "no-action" letter should be forwarded to Ms. O'Dell at the following address: Laborers' International Union of North America, 905 16th Street, NW, Washington, DC 20006.

Sincerely,



Michael J. Short
Secretary-Treasurer

cc: Jennifer O'Dell
Enclosure

OFFICERS - BOARD OF TRUSTEES

ERIC C. COOK
CHAIRMAN

MICHAEL J. SHORT
SECRETARY-TREASURER

JANETTA E. ENGLAND
ADMINISTRATIVE MANAGER

Resolved: Given that Bank of America Corporation ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

Supporting Statement: Many Company shareholders are experiencing serious financial losses related to the problems afflicting our nation's credit markets and economy. The Company's financial and stock price performance has been challenged by these credit market events and their impact on the nation's economy. The Company's participation in the Stabilization Act's TARP is the result of these broad capital market problems and decisions made by Company senior executives.

Generous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership. Establishing renewed investor confidence in the markets and corporate leadership is a critical challenge. Congress enacted executive compensation requirements for those companies participating in the Stabilization Act's TARP. Unfortunately, we believe those executive compensation restrictions fall to adequately address the serious shortcomings of many executive compensation plans. This proposal calls for a set of more rigorous executive compensation

reforms that we believe will significantly improve the pay-for-performance features of the Company's plan and help restore investor confidence. Should existing employment agreements with Company senior executives limit the Board's ability to implement any of these reforms, the Board and its compensation committee is urged to implement the proposed reforms to the greatest extent possible. At this critically important time for the Company and our nation's economy, the benefits afforded the Company from participation in the TARP justify these more demanding executive compensation reforms.



EMPLOYEES PENSION PLAN

Committee
 Gerald W. McEntee
 William Lucy
 Edward J. Keller
 Kathy J. Seckman
 Henry C. Scholl

November 17, 2008

VIA Overnight Mail and Telecopier (704) 386-5083

Bank of America Corporation
 101 South Tryon Street, NC1-002-29-01
 Charlotte, North Carolina 28255
 Attention: Alice Herald, Deputy General Counsel and Corporate Secretary

Dear Ms. Herald:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2008 proxy statement of Bank of America (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2009 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 78,372 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Charles Jurgonis at (202) 429-1007.

Sincerely,

GERALD W. McENTEE
 Chairman

Enclosure

RESOLVED, that stockholders of Bank of America Corporation ("Bank of America") urge the Compensation and Benefits Committee of the Board of Directors (the "Committee") to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise), and to report to stockholders regarding the policy before Bank of America 2010 annual meeting of stockholders. The stockholders recommend that the Committee not adopt a percentage lower than 75% of net after-tax shares. The policy should address the permissibility of transactions such as hedging transactions which are not sales but reduce the risk of loss to the executive.

SUPPORTING STATEMENT

Equity-based compensation is an important component of senior executive compensation at Bank of America. According to Bank of America 2008 proxy statement, most of the total annual compensation opportunity for executive officers is provided in stock.

We believe there is a link between shareholder wealth and executive wealth that correlates to direct stock ownership by executives. According to an analysis conducted by Watson Wyatt Worldwide, companies whose CFOs held more shares generally showed higher stock returns and better operating performance. (Alix Stuart, "Skin in the Game," CFO Magazine (March 1, 2008))

Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Bank of America long-term success and would better align their interests with those of Bank of America stockholders. In the context of the current financial crisis, we believe it is imperative that companies reshape their compensation policies and practices to discourage excessive risk-taking and promote long-term, sustainable value creation. A 2002 report by a commission of The Conference Board endorsed the idea of a holding requirement, stating that the long-term focus promoted thereby "may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions."

Bank of America has a minimum stock ownership guideline requiring directors and executives to own a certain number of shares of Bank of America stock. The directors and executives covered by the policy have five years in which to comply. We believe this policy does not go far enough to ensure that equity compensation builds executive ownership. We also view a retention requirement approach as superior to a stock ownership guideline because a guideline loses effectiveness once it has been satisfied.

We urge stockholders to vote for this proposal.

December 2, 2008

Kristin Marie Oberheu
Bank of America Corporation
NCI-002-29-01
101 South Tryon Street
Charlotte, NC 28255

Dear Ms. Oberheu:

Thank you for your response to my shareholder proposal. The information you provided was very helpful. I received your letter on November 26, 2008.

Attached please find my revised proposal which is in response to your position that my original submission actually contained multiple proposals. I would like this revised proposal to be included in the proxy statement for the 2009 Annual Meeting of Stockholders.

With regard to the "record" holder issue you will receive a letter from UBS under separate cover that should provide the information you requested. This letter was mailed from their offices in Atlanta, Ga on December 1, 2008. For your convenience I have attached a copy of the letter you will receive from UBS.

Regarding my intentions to hold the shares please consider this letter as my written statement that, in accordance with Rule 14a-8(b), it is my intention to continue to hold the shares through the date of the 2009 meeting of shareholders.

Thank you,


Andrea Loyd Bell

Harold Loyd By Pass Trust
U/W DTD 11/1/99
Andrea Loyd Bell Trustee

BANK OF AMERICA SHAREHOLDER PROPOSAL

PROPOSAL: To approve a proposal to request that the Board of Directors amend the long and short term incentive plans (long and short term incentive plans shall be broadly defined and include all group and individual plans or agreements) of the named executive officers so that no payments under any such plan for any past, current or future periods will be made or accrued to any named executive officer until such time as the price of Bank of America common stock rises to the opening value on 10-6-08 and the quarterly dividend on common stock has been restored to a minimum of \$0.64 per share and both of these values are maintained for at least four consecutive calendar quarters.

SUPPORTING STATEMENT: On October 6-7, 2008 company management took deliberate actions that resulted in a significant reduction in shareholder value. These actions included offering approximately 455 million shares of common stock priced at \$22 per share which was significantly below the market value and reducing the quarterly dividend to \$0.32 from \$0.64. While these actions may be in the long term best interest of the company, it would be inconsistent and inappropriate for named executives to profit while shareholders suffer. Therefore the purpose of this proposal is to align executive's interests with those of the shareholders by requiring that no named executive officer accrues or receives any value from any variable pay arrangement until such time as the lost shareholder value has been restored.

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

November 24, 2006

Bank of America Corporation
Attn: Shareholder Relations
100 North Tryon Street
Charlotte, NC 28255

To whom it may concern:

We are shareholders in Bank of America Corporation. In our four accounts at Smith Barney we have 21,128 common shares. See enclosed Smith Barney statements (highlighted).

Enclosed please also find a proposal to the shareholders of Bank of America to be included on the proxy ballot for the annual meeting next calendar year in 2009. In a recent conversation with BAC's corporate headquarters we were told such ballot questions need to be submitted by December 9, 2008 to be included. We are therefore forwarding this communication by certified mail to ensure its timely arrival.

We can be reached at the Florida address above after December 29, 2008. The telephone ~~there is~~ OMB Memorandum ~~Until that time we will be at~~ *** FISMA & OMB Memorandum M-07-16 ***
*** FISMA & OMB Memorandum M-07-16 *** ~~with telephone~~ OMB Memorandum. ~~Please contact us with any proposed wording~~
or format changes that may be necessary to comply with existing corporate covenants regarding such matters.

Respectfully submitted,

Donald M. Schwartz
Donald M. Schwartz
Judith A. Schwartz
Judith A. Schwartz

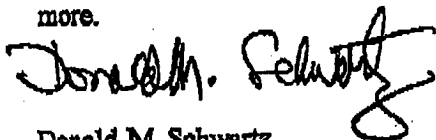
CHARLOTTE, NC
NOV 28 08
BANK OF AMERICA
LEGAL DEPARTMENT

WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and

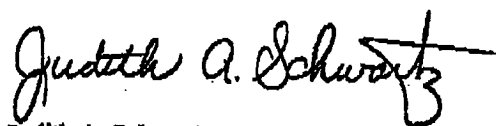
WHEREAS: The common stock dividend of Bank of America Corporation has been reduced by 50%, even after assurances by the president and CEO that it was safe, and

WHEREAS: Top tier management of Bank of America Corporation, must, in spite of a severe economic downturn, bear its share of the responsibility for the poor performance of the corporation,

THEREFORE, BE IT RESOLVED: That the common stockholders of Bank of America Corporation recommend that top tier management of Bank of America Corporation Voluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices. We further recommend that the voluntary actions listed above remain in effect until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs and remains above that figure for six months or more.



Donald M. Schwartz



Judith A. Schwartz



Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Indiana Laborers' Pension Fund
c/o Laborers' International Union
of North America
Attention: Ms. Jennifer O'Dell
905 16th Street NW
Washington, DC 20006

Re: Bank of America Corporation (the "Corporation")

Dear Ms. O'Dell:

On November 17, 2008, we received Indiana Laborers' Pension Fund's ("Fund") request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider the Fund's request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in the Fund's submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe the Fund has submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(c) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise the Fund's submission so that the Fund is submitting only one proposal.

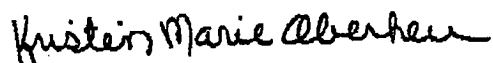
Our records do not reflect that the Fund is the "record" holder of their shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of the Fund's shares, verifying that, at the time the Fund submitted their proposal, the Fund held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our proxy statement.

Again, please note that if we do not receive the Fund's revised submission and their ownership documentation within 14 calendar days of your receipt of this letter, we may properly exclude the Fund's proposal from our 2009 proxy statement.

In asking the Fund to provide the foregoing information, the Corporation does not relinquish its right to later object to including the Fund's proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NC1-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment

Exhibit F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mail piece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>Jennifer O'Dell</i></p>	
<p>1. Article Addressed to:</p> <p style="text-align: center;">Indiana Laborers' Pension Fund c/o Laborers' International Union of North America Attn: Ms. Jennifer O'Dell 905 16th Street NW Washington, DC 20006</p>	<p>B. Restricted Delivery (Printed Name)</p> <p><i>Jennifer O'Dell</i></p>	<p>C. Date of Delivery</p> <p><i>1/10/08</i></p>
<p>2. Article Number (Number from service label)</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> O.D.M.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102305-02-N-1040</p>		

7004 1160 0007 1426 7716

Bell

*** FISMA & OMB Memorandum M-07-16 ***

p. 2



Legal Department

November 19, 2008

Delivery by US Mail
Return Receipt Requested

Ms. Andrea Loyd Bell

*** FISMA & OMB Memorandum M-07-16 ***

Re: Bank of America Corporation (the "Corporation")

Dear Ms. Bell:

On November 18, 2008, we received your request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider your request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in your submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe you have submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(c) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise your submission so that you are submitting only one proposal.

Our records do not reflect that you are the "record" holder of your shares of the Corporation's common stock. In accordance with applicable rules of the Securities and Exchange Commission ("SEC"), please send a written statement from the "record" holder of your shares, verifying that, at the time you submitted your proposal, you held at least \$2,000 in market value of the Corporation's common stock and had held such stock continuously for at least one year. Please note that if we do not receive such documentation within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our proxy statement.

In addition, under Rule 14a-8(b), you must also provide us with a written statement that you intend to continue to hold your securities through the date of the 2009 annual meeting of shareholders. We must receive your written statement within 14 calendar days of your receipt of this letter.

Bell

*** FISMA & OMB Memorandum M-07-16 ***

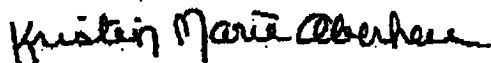
p. 3

Again, please note that if we do not receive your revised submission, your ownership documentation or your written statement within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our 2009 proxy statement.

In asking you to provide the foregoing information, the Corporation does not relinquish its right to later object to including your proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NCI-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>Andrea Loyd Bell</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>Andrea Loyd Bell</i></p> <p>C. Date of Delivery</p> <p><i>NOV 26</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p><i>Ms. Andrea Loyd Bell</i></p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		<p>7004 1160 0007 1426 7709</p>	
PS Form 3811, February 2004		Domestic Return Receipt	
		100993-02-11-1548	



UBS Financial Services Inc.
2455 Peachtree Rd. NE
Suite 1700
Atlanta, GA 30326
Tel. 404-760-3312
Fax 404-760-3027
Toll Free 800-234-9928

Leonard M. Starr, CIMA®
Senior Vice President - Investments
Advisory & Brokerage Services
Prime Consultant
Prime Asset Consulting Program
leonard.starr@ubs.com

www.ubs.com

December 1, 2008

Bank of America
Kristin Marie Oberhaus
101 S Tryon Street
Charlotte, NC 28255

Dear Kristin,

Mrs. Andrea Loyd Bell is the trustee for the Harold Loyd Bypass Trust dated 11/01/88 that is held at UBS. The trust holds 7,182 Bank of America shares. The Trust has owned all of the BAC shares longer than one year. If you have any questions please call me at 404-760-3000.

Sincerely,

A handwritten signature in cursive script that reads "Leonard Starr".

Leonard Starr, CIMA
Senior Vice President-Investments
Advisory & Brokerage Services

cc: Andrea Loyd Bell

**HUNTON &
WILLIAMS**

EXHIBIT B

See attached.

Donald M. and Judith A. Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

November 24, 2006

Bank of America Corporation
Attn: Shareholder Relations
100 North Tryon Street
Charlotte, NC 28255

To whom it may concern:

We are shareholders in Bank of America Corporation. In our four accounts at Smith Barney we have 21,128 common shares. See enclosed Smith Barney statements (highlighted).

Enclosed please also find a proposal to the shareholders of Bank of America to be included on the proxy ballot for the annual meeting next calendar year in 2009. In a recent conversation with BAC's corporate headquarters we were told such ballot questions need to be submitted by December 9, 2008 to be included. We are therefore forwarding this communication by certified mail to ensure its timely arrival.

We can be reached at the Florida address above after December 29, 2008. The telephone ~~there is~~ **until that time we will be at**

~~with telephone~~ **Please contact us with any proposed wording or format changes that may be necessary to comply with existing corporate covenants regarding such matters.**

Respectfully submitted,

Donald M. Schwartz
Donald M. Schwartz
Judith A. Schwartz
Judith A. Schwartz

CHARLOTTE, NC
NOV 28 08
BANK OF AMERICA
LEGAL DEPARTMENT

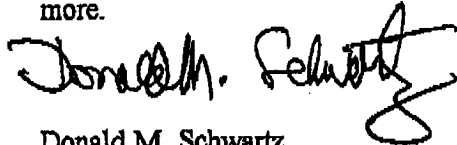
WHEREAS: The value of Bank of America Corporation common stock has diminished over 75% from its all-time highs, and

WHEREAS: The common stock dividend of Bank of America Corporation has been reduced by 50%, even after assurances by the president and CEO that it was safe, and

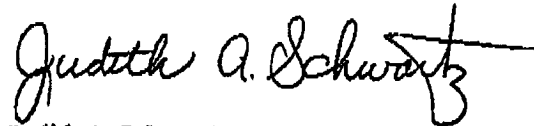
WHEREAS: Top tier management of Bank of America Corporation, must, in spite of a severe economic downturn, bear its share of the responsibility for the poor performance of the corporation,

THEREFORE, BE IT RESOLVED: That the common stockholders of Bank of America Corporation recommend that top tier management of Bank of America Corporation Voluntarily and temporarily 1.) reduce their salaries by 50%, 2.) forego any bonuses, and 3.) accept no stock options at prices less than 50% of past all-time high stock prices.

We further recommend that the voluntary actions listed above remain in effect until such time as 1.) the original full dividend is restored and 2.) the price of the common stock reaches at least 50% of its all-time highs and remains above that figure for six months or more.



Donald M. Schwartz



Judith A. Schwartz

**HUNTON &
WILLIAMS**

EXHIBIT C

See attached.



Legal Department

December 10, 2008

**Delivery by Federal Express
Overnight Delivery**

Mr. Donald Schwartz
Mrs. Judith Schwartz

*** FISMA & OMB Memorandum M-07-16 ***

Re: Bank of America Corporation (the "Corporation")

Dear Mr. and Mrs. Schwartz:

On November 28, 2008, we received your request to include several stockholder proposals in the Corporation's 2009 annual proxy statement. In order to properly consider your request, and in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), we hereby inform you of certain eligibility and procedural defects in your submission, as described below. For your convenience, I have included a copy of Rule 14a-8 with this letter.

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal for a particular shareholder's meeting. We believe you have submitted multiple proposals for inclusion in the 2009 annual proxy statement. Accordingly, as required by Rule 14a-8(c) and Rule 14a-8(f), within 14 calendar days after receipt of this letter, please revise your submission so that you are submitting only one proposal.

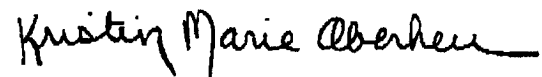
In addition, under Rule 14a-8(b), you must also provide us with a written statement that you intend to continue to hold your securities through the date of the 2009 annual meeting of shareholders. We must receive your written statement within 14 calendar days of your receipt of this letter.

Again, please note that if we do not receive your revised submission or your written statement within 14 calendar days of your receipt of this letter, we may properly exclude your proposal from our 2009 proxy statement.

In asking you to provide the foregoing information, the Corporation does not relinquish its right to later object to including your proposal on related or different grounds pursuant to applicable SEC rules.

Please send the requested documentation to my attention: Kristin Marie Oberheu, Bank of America Corporation, NC1-002-29-01, 101 South Tryon Street, Charlotte, NC 28255. If you would like to discuss this matter with me, you can call me at 980-386-7483.

Very truly yours,



Kristin Marie Oberheu, NCCP
Vice President/Senior Paralegal

Attachment