

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

FORM 8-K

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

Date of Report (Date of earliest event reported):
April 28, 2010

BANK OF AMERICA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

1-6523
(Commission File Number)

56-0906609
(IRS Employer Identification No.)

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

(704) 386-5681
(Registrant's telephone number, including area code)

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

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

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

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On April 28, 2010, Bank of America Corporation (the “Registrant”) held its 2010 Annual Meeting of Stockholders (the “Annual Meeting”). At the Annual Meeting, the stockholders of the Registrant approved an amendment to the Registrant’s 2003 Key Associate Stock Plan (the “Stock Plan,” as amended, the “Amended Stock Plan”) to, among other things, add 500 million shares of the Registrant’s Common Stock to the pool of shares available for awards. The Amended Stock Plan is substantially identical in design to the prior Stock Plan, other than the increase to the share pool and to permit the vesting of awards upon a change in control only if the participant’s employment also is terminated in connection with the change in control. The Amended Stock Plan extended the Stock Plan’s term by two years from December 31, 2013 to December 31, 2015.

A description of the material terms and conditions of the Amended Stock Plan appears on pages 59-70 of the Registrant’s definitive proxy statement for the Annual Meeting filed with the Securities and Exchange Commission on March 17, 2010 (the “Proxy Statement”). The description, a copy of which is filed as Exhibit 10.1 hereto, is incorporated herein by reference. The description of the Amended Stock Plan incorporated herein by reference does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended Stock Plan, which is attached as Exhibit 10.2 to this report and is incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On April 28, 2010, upon receipt of stockholder approval at the Annual Meeting, the Registrant amended its Amended and Restated Certificate of Incorporation to provide for an increase in the number of shares of the Registrant’s common stock authorized for issuance from 11.3 billion to 12.8 billion. A copy of the Certificate of Amendment to the Amended and Restated Certificate of Incorporation is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Item 5.07. Submission of Matters to a Vote of Security Holders.

On April 28, 2010, the Registrant held its Annual Meeting. As of the record date for the Annual Meeting, there were 10,032,241,771 shares, representing 10,057,452,645 votes, entitled to vote on all matters presented to the Registrant’s stockholders at the Annual Meeting. Votes representing 82.34% of the combined voting power of the Registrant’s common stock, Series B Preferred Stock and Series 1-8 Preferred Stock were present in person or represented by proxy.

The following are the voting results on each matter submitted to the Registrant’s stockholders at the Annual Meeting. The proposals below are described in detail in the Proxy Statement. At the Annual Meeting, the 13 nominees for director were elected to the Registrant’s Board of Directors (Proposal 1 below). In addition, management proposals regarding ratification of the retention of PricewaterhouseCoopers LLP as the Registrant’s registered independent public accounting firm for 2010, adoption of an amendment to the Registrant’s Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock, an advisory vote approving executive compensation, and amendment of the Amended Stock Plan (Proposals 2-5 below), as well as an advisory stockholder proposal regarding special stockholder meetings (Proposal 8 below), were approved. Six additional stockholder proposals (Proposals 6-7 and 9-12 below) were not approved.

1. Election to the Registrant's Board of Directors the following 13 nominees:

	For	Against	Abstentions	Broker Non-Votes
Susan S. Bies	6,146,947,693	483,330,169	25,980,988	1,625,416,566
William P. Boardman	5,996,053,105	634,163,083	26,042,662	1,625,416,566
Frank P. Bramble, Sr.	6,016,679,945	613,351,587	26,227,318	1,625,416,566
Virgis W. Colbert	5,433,914,792	1,194,504,390	27,839,668	1,625,416,566
Charles K. Gifford	5,989,317,246	641,195,256	25,746,348	1,625,416,566
Charles O. Holliday, Jr.	6,147,724,271	482,381,756	26,152,823	1,625,416,566
D. Paul Jones, Jr.	6,145,225,525	484,651,922	26,351,403	1,625,416,566
Monica C. Lozano	5,777,586,572	852,883,351	25,788,927	1,625,416,566
Thomas J. May	6,032,030,612	597,770,993	26,457,245	1,625,416,566
Brian T. Moynihan	6,147,504,933	483,492,728	25,261,189	1,625,416,566
Donald E. Powell	5,995,310,420	633,911,270	27,037,160	1,625,416,566
Charles O. Rossotti	5,157,660,400	1,471,907,198	26,691,252	1,625,416,566
Robert W. Scully	5,967,301,428	663,073,111	25,884,311	1,625,416,566

2. Ratification of selection of PricewaterhouseCoopers LLP as the Registrant's registered independent public accounting firm for 2010.

For	Against	Abstentions
8,092,815,196	142,676,159	46,184,061

3. Adoption of an amendment to the Bank of America Corporation Amended and Restated Certificate of Incorporation to increase the authorized number of shares of common stock from 11.3 billion to 12.8 billion.¹

For	Against	Abstentions
7,852,848,003	381,782,877	47,044,536

¹ Common Stock only results were 7,832,353,333 For; 380,159,947 Against; and 46,476,429 Abstentions.

4. An advisory (non-binding) vote approving executive compensation.

For	Against	Abstentions
7,248,696,487	901,070,885	131,908,044

5. Amendment of the 2003 Key Associate Stock Plan.

For	Against	Abstentions	Broker Non-Votes
5,481,650,234	1,132,620,698	41,987,918	1,625,416,566

6. Stockholder proposal regarding disclosure of government employment.

For	Against	Abstentions	Broker Non-Votes
683,092,678	4,971,432,113	1,001,734,059	1,625,416,566

7. Stockholder proposal regarding non-deductible pay.

For	Against	Abstentions	Broker Non-Votes
2,214,136,258	4,350,307,085	91,815,507	1,625,416,566

8. Stockholder proposal regarding special stockholder meetings.

For	Against	Abstentions	Broker Non-Votes
3,477,323,509	3,123,745,670	55,189,671	1,625,416,566

9. Stockholder proposal regarding an advisory vote on executive compensation.

For	Against	Abstentions	Broker Non-Votes
2,781,783,995	3,532,696,481	341,778,374	1,625,416,566

10. Stockholder proposal regarding succession planning.

For	Against	Abstentions	Broker Non-Votes
2,645,983,814	3,956,840,679	53,434,357	1,625,416,566

11. Stockholder proposal regarding over-the-counter derivatives trading.

For	Against	Abstentions	Broker Non-Votes
2,557,310,204	3,977,244,406	121,704,240	1,625,416,566

12. Stockholder proposal regarding recoupment of incentive compensation paid to senior executives.

For	Against	Abstentions	Broker Non-Votes
2,892,695,327	3,704,497,984	59,065,539	1,625,416,566

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

EXHIBIT NO.	DESCRIPTION OF EXHIBIT
3.1	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Bank of America Corporation
10.1	Summary of Bank of America Corporation 2003 Key Associate Stock Plan, as amended and restated, from pages 59-70 of the Proxy Statement
10.2	Bank of America Corporation 2003 Key Associate Stock Plan, as amended and restated

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BANK OF AMERICA CORPORATION

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

Dated: May 3, 2010

INDEX TO EXHIBITS

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10.2	Bank of America Corporation 2003 Key Associate Stock Plan, as amended and restated

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BANK OF AMERICA CORPORATION**

Pursuant to Section 242
of the General Corporation Law of the State of Delaware

Bank of America Corporation, a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by changing the number of shares of stock the Corporation is authorized to issue, so that, the first sentence of Article 3 thereof shall read as follows:

"3. The number of shares, par value \$.01 per share, the Corporation is authorized to issue is Twelve Billion Nine Hundred Million (12,900,000,000), divided into the following classes:

Class	Number of Shares
Common	12,800,000,000
Preferred	100,000,000."

2. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by a duly authorized officer on this 28th day of April, 2010.

By: /s/ TERESA M. BRENNER
Name: Teresa M. Brenner
Title: Associate General Counsel

ITEM 5: AMENDMENT OF THE 2003 KEY ASSOCIATE STOCK PLAN

Bank of America currently maintains the Bank of America Corporation 2003 Key Associate Stock Plan, as amended and restated effective April 1, 2004, and as subsequently amended effective April 26, 2006 and December 5, 2008, which Bank of America refers to as the Stock Plan. Under this plan, Bank of America has reserved a number of shares of its common stock for issuance to key associates in the form of stock options, stock appreciation rights (SARs), restricted stock shares and restricted stock units. The Stock Plan's term is currently scheduled to expire on December 31, 2013.

The Stock Plan serves a critical role in our pay-for-performance compensation program. Equity awards are the simplest, most direct way to align associate interests with those of stockholders. Because the shares available for equity awards are limited, in order to balance compensation principles with stockholder interests in limiting dilution, we generally limit equity awards to more senior positions (as opposed to broad-based awards). As a general rule, the more senior or highly compensated the position, the larger the portion of the total incentive opportunity that is provided in equity. For example, for certain senior positions the equity incentive component has comprised up to 50% of total compensation, and more than 50% for executive officers.

A core objective of our equity awards under the Stock Plan is to focus key associates on sustainable results and to adjust pay delivered to reflect results ultimately achieved. In recent years we have emphasized grants of restricted stock and restricted stock units and moved away from granting stock options in order to strengthen pay alignment with sustained performance. Restricted stock and restricted stock units provide an effective mechanism to adjust pay delivered to reflect post-grant performance, both upwards and downwards. In addition, restricted stock and restricted stock units provide meaningful value consideration to strengthen performance linkage and governance objectives of the clawback provisions discussed below.

We continue to look for ways to improve our compensation programs to ensure they provide market-competitive rewards realized over time that appropriately reflect the time horizon of the risks taken and encourage proper conduct. Beginning with performance year 2009, all equity awards include a "detrimental conduct clawback" under which awards may be canceled if the associate engages in certain detrimental conduct, including violation of policies, gross negligence in performance of duties, unethical conduct and certain other types of serious misconduct in

the performance of duties. Equity awards beginning with performance year 2009 for key risk-takers also include a “performance-based clawback” that subjects awards to potential cancellation if we do not remain profitable over the vesting period. We believe these award features make us an industry leader in responsible equity design and are consistent with emerging best practices from organizations like the U.S. Federal Reserve, the U.K. Financial Services Authority and the G20 Financial Stability Forum.

In order to provide a sufficient pool of equity for Bank of America to operate this compensation program, Bank of America intends to adopt, subject to stockholder approval, an amendment to the current Stock Plan to add 500 million shares of Bank of America common stock to the pool of shares available for awards. Bank of America refers to the Stock Plan as modified by this amendment as the Amended Stock Plan. The Amended Stock Plan is substantially identical in design to the current Stock Plan, other than the proposed increase to the share pool. The Amended Stock Plan extends the Stock Plan’s term by two years, from December 31, 2013 to December 31, 2015.

Plan Features and Grant Practices That Protect Stockholder Interests

The Amended Stock Plan and Bank of America’s grant practices include a number of features intended to protect the interests of stockholders:

- The Compensation and Benefits Committee regularly reviews the dilutive impact of Bank of America’s stock program, including by monitoring its “overhang” relative to its primary competitor group of leading U.S. financial services companies. “Overhang” measures shares covering outstanding awards and shares available for future grants as a percentage of the common shares outstanding, as more fully defined on page 66. As of 2009, based on the most current available data, Bank of America’s overhang was significantly lower than the median for its primary competitor group. With the shares requested, our overhang will be less than 10%. This represents a meaningful reduction in overhang from the current Stock Plan’s 11.75% level when the plan was last approved by stockholders in 2008.
- The Compensation and Benefits Committee controls the dilutive effect of equity issued under the plan by controlling the number of shares issued on an annual basis (run-rate). Over the past three calendar years (2007-2009), the annual share usage has averaged less than 1.2% of common shares outstanding.
- Beginning with performance year 2009, equity awards will be subject to up to three separate and distinct “clawback” requirements that can result in the awards potentially being canceled or prior payments recouped. These clawback requirements work together to ensure that rewards realized over time appropriately reflect the time horizon of the risks taken and encourage proper conduct. The three clawback requirements, which are further discussed in the Compensation Discussion and Analysis on page 31, include a detrimental conduct clawback (applicable to all awards), a performance-based clawback (applicable to executive officer and other key risk-taker awards) and the Incentive Compensation Recoupment Policy (applicable to executive officers).
- The Amended Stock Plan includes a limit on the number of shares that can be granted as “full value” awards of restricted stock shares or units. Under the Amended Stock Plan, any additional grants of full value awards beyond this limit would be counted at a 2.5:1 premium factor against the remaining available share pool.
- The Amended Stock Plan includes a minimum three-year pro rata vesting schedule for awards. In practice, grants of stock options and restricted stock shares and units to executive officers and other members of senior management have incorporated a three-year cliff-vesting schedule. Grants of stock options to executive officers and other members of senior management also include a requirement to hold “net profit shares” for up to three years after exercise.
- For awards made to senior management for performance in 2007 and later years, dividends/dividend equivalents on restricted stock shares/units are accrued with interest from the grant date and paid only if and when the underlying award becomes vested.
- The Amended Stock Plan incorporates specific limitations on the ability of the Compensation and Benefits Committee to accelerate vesting or waive restrictions on awards.

- The Amended Stock Plan does not provide for automatic vesting of awards upon a change in control (sometimes referred to as “single trigger” vesting). Instead, the Amended Stock Plan permits the Compensation and Benefits Committee to provide for vesting only if the participant’s employment is terminated in connection with a change in control (i.e., “double trigger” vesting).
- The Amended Stock Plan does not include provisions frequently labeled as “liberal share counting” provisions by institutional investors (e.g., the ability to re-use shares tendered or surrendered to pay the exercise cost or tax obligation of grants or the “net counting” of shares for stock option or SAR exercises). The only add backs are for awards that are canceled or forfeited or for awards settled in cash.
- The Amended Stock Plan prohibits the use of discounted stock options or SARs, the use of dividend equivalents on stock options or SARs, or the use of reload options.
- The Amended Stock Plan does not provide for option or equity transferability to third parties “for consideration.” The transfer of awards, if at all, is limited to immediate family members without consideration and by the laws of descent and distribution.
- The Amended Stock Plan broadly prohibits the re-pricing of stock options or SARs without stockholder approval, including the repurchase of underwater options or SARs for cash.
- The current Stock Plan was last approved by stockholders in 2008 with a more than 81% approval rating.

The following is a summary of the material terms of the Amended Stock Plan, with significant differences from the current Stock Plan identified where applicable. It is qualified in its entirety by reference to the terms of the Amended Stock Plan. A copy of the Amended Stock Plan is attached to this proxy statement as Appendix B. The Amended Stock Plan will become effective only if it is approved by Bank of America’s stockholders.

Number of Shares

Under the Stock Plan as currently in effect, there are reserved for issuance an aggregate of 200 million shares of Bank of America common stock, plus (a) any remaining shares that were available for awards as of December 31, 2002 under the Bank of America Corporation Key Employee Stock Plan (the predecessor to the Stock Plan) (33.7 million shares), plus (b) any shares covered by awards granted under the Bank of America Corporation Key Employee Stock Plan before January 1, 2003 that again become available because of cancellation or forfeiture of an award, plus (c) 102 million shares approved by the stockholders effective as of April 1, 2004 (upon completion of the FleetBoston acquisition), plus (d) 180 million shares approved by the stockholders effective as of April 26, 2006 (related to the MBNA acquisition), plus (e) 105 million shares approved by the stockholders effective as of January 1, 2009 (upon completion of the Merrill Lynch acquisition). As of February 28, 2010, there were 39.7 million shares of Bank of America common stock available for future awards under the current Stock Plan. Of this total, no more than approximately 4.1 million shares may be issued as restricted stock shares or restricted stock units (on a one-for-one share basis).

Under the Amended Stock Plan, there would be added an additional 500 million shares of Bank of America common stock available for awards, all of which could be awarded as restricted stock shares or restricted stock units on a one-for-one share basis. As under the current Stock Plan, any full value award issued in excess of this limit would count as 2.5 shares against the pool of available shares.

The share counting and add-back provisions under the Amended Stock Plan are unchanged. As under the current Stock Plan, shares covered by awards under the Amended Stock Plan will again be available for awards if and to the extent (a) the award is canceled or forfeited or (b) the award is settled in cash. Shares used to cover the exercise price of stock options or to cover any tax withholding obligations in connection with awards will not again be available for awards under the Amended Stock Plan. In addition, the total number of shares covering stock-settled SARs or net-settled options will be counted against the pool of available shares, not just the net shares issued upon exercise. In addition, if awards currently outstanding under the Merrill Lynch & Co., Inc. Long Term Incentive Compensation Plan for Executive Officers or the Merrill Lynch Financial Advisor Capital Accumulation Award Plan are canceled, forfeited or settled in cash, the shares related to such awards will thereafter be available for awards under the Amended Stock Plan. Any such prior Merrill Lynch awards that are currently outstanding as restricted stock shares or units could be awarded as restricted stock shares or units under the Amended Stock Plan on a one-for-one share basis. Any such prior Merrill Lynch awards that are currently outstanding as stock op-

tions or SARs would be added to the pool of shares available as stock options or SARs on a one-for-one basis or count as 2.5 shares if issued as restricted stock shares or units.

Shares issued under the Amended Stock Plan, as under the current Stock Plan, may be original issue shares, treasury stock, shares purchased in the open market or otherwise, all as determined by the company.

Administration

As under the current Stock Plan, the Amended Stock Plan is designed to be administered by the Compensation and Benefits Committee. To the extent permitted by law, the Compensation and Benefits Committee may designate an individual or committee (which need not consist of directors) to act as the appropriate committee under the Amended Stock Plan for awards to key associates who are not “officers” under Section 16 of the Securities Exchange Act of 1934 or “covered employees” under Section 162(m) of the Code. Under the Amended Stock Plan, the Compensation and Benefits Committee has authority with respect to the following:

- the selection of the key associates to receive awards from time to time;
- the granting of awards in amounts as it determines;
- the imposition of limitations, restrictions and conditions upon awards as it deems appropriate;
- the establishment of performance targets and allocation formulas for awards of restricted stock shares or restricted stock units intended to be “qualified performance-based compensation” under Code Section 162(m);
- the certification of the attainment of performance goals, if applicable, as required by Code Section 162(m);
- the interpretation of the Amended Stock Plan and the adoption, amendment and rescission of administrative guidelines and other rules and regulations relating to the Amended Stock Plan;
- the correction of any defect or omission or reconciliation of any inconsistency in the Amended Stock Plan or any award granted under the Amended Stock Plan; and
- the making of all other determinations and taking of all other actions necessary or advisable for the implementation and administration of the Amended Stock Plan.

The Compensation and Benefits Committee also has limited authority to accelerate the vesting and/or waive any restrictions on any outstanding awards. Such authority to accelerate vesting or waive restrictions may not be applied to: (i) any current or former executive officer of Bank of America; or (ii) more than an aggregate of 20 million shares, which represents 4% of the additional shares requested. (The current Stock Plan authorizes accelerated vesting on up to 9 million shares, which was 5% of the shares requested in 2006 when this provision was first added.) No awards may be made under the Amended Stock Plan after December 31, 2015.

Eligibility

Only “key associates” of Bank of America and its subsidiaries may participate in the Amended Stock Plan. Key associates are those associates of Bank of America and its subsidiaries who occupy managerial or other important positions and who have made, or are expected to make, important contributions to the business of Bank of America, as determined by the Compensation and Benefits Committee, including persons employed outside the United States. Approximately 45,000 associates are expected to be eligible to participate. As mentioned above, the Compensation and Benefits Committee in its discretion selects which key associates would in fact receive any awards from time to time.

Types of Awards

The Amended Stock Plan, like the current Stock Plan, permits awards of stock options, SARs, restricted stock shares and restricted stock units, all of which are described in more detail below.

Awards of Stock Options and SARs. The Amended Stock Plan provides for the grant of options to purchase shares of Bank of America common stock at option prices which are not less than the fair market value of a share of Bank of America common stock at the close of business on the date of grant. (The fair market value of a share of Bank of America common stock as of February 26, 2010, was \$16.66.) The Amended Stock Plan also provides for the grant of SARs to key associates. SARs entitle the holder upon exercise to receive either cash or shares of Bank of America common stock or a combination of the two, as the Compensation and Benefits Committee in its discretion may

determine, with a value equal to the difference between: (i) the fair market value on the exercise date of the shares with respect to which a SAR is exercised; and (ii) the fair market value of the shares on the date of grant.

Awards of options under the Amended Stock Plan, which may be either incentive stock options (which qualify for special tax treatment) or nonqualified stock options, are determined by the Compensation and Benefits Committee. No more than an aggregate of 40 million shares may be awarded as incentive stock options under the Amended Stock Plan. The terms and conditions of each option and SAR are to be determined by the Compensation and Benefits Committee (or its designees) at the time of grant.

Options and SARs granted under the Amended Stock Plan will expire not more than 10 years from the date of grant, and the award agreements entered into with each participant will specify the extent to which options and SARs may be exercised during their respective terms, including in the event of the participant's death, disability or termination of employment.

It has been Bank of America's practice over the last several years to require participants in senior management who receive stock options to hold any gains realized upon exercise of their stock options (net of taxes and transaction costs) in the form of shares of Bank of America common stock for a period of one or three years following exercise (depending on the participant's level within senior management), or until termination of employment, if earlier. Stock options have not been granted for performance year 2008 or 2009 awards.

The Amended Stock Plan includes two additional limitations on stock option and SAR grants:

- The Amended Stock Plan expressly prohibits dividend equivalents with respect to stock options and SARs.
- The Amended Stock Plan permits nonqualified stock options and SARs to be transferable if and to the extent permitted under the applicable award agreement, but prohibits any such transfer to be made for consideration.

Awards of Restricted Stock Shares and Restricted Stock Units. Under the Amended Stock Plan, the Compensation and Benefits Committee may award key associates restricted shares of Bank of America common stock or restricted stock units which represent the right to receive shares of Bank of America common stock (or cash equal to the fair market value of those shares). The award agreement with the participant will contain the terms of the award, including any applicable conditions, which may include the continued service of the participant with Bank of America, the attainment of specified performance goals or any other conditions deemed appropriate by the Compensation and Benefits Committee.

Bank of America's practice has been to link the award of restricted stock shares and units to an annual review of key associate performance. The annual performance review follows a principled, structured framework for analysis. This analysis focuses on financial performance measures that the Compensation and Benefits Committee believes collectively best indicate successful management of our business. The analysis takes into account both performance against internal business goals and relative performance against our competitors over one-year and multi-year periods. See the Compensation Discussion and Analysis on page 30 for additional information on our pay-for-performance program.

Restricted stock shares will be held in the custody of Bank of America until the applicable restrictions, if any, have been satisfied. The participant cannot sell, transfer, pledge, assign or otherwise alienate or hypothecate restricted stock shares until the applicable restrictions are satisfied. Once the restrictions are satisfied, the shares will be delivered to the participant's account, free of restrictions. During the period of restriction, the participant may exercise full voting rights with respect to the restricted stock shares. The participant will also be credited with dividends with respect to the shares. Dividends may be payable currently or subject to additional restrictions as determined by the Compensation and Benefits Committee and reflected in the award agreement. For awards made to senior management for performance in 2007 and later years, dividends are accrued with interest from the grant date and paid only if and when the underlying award becomes vested.

The award agreement for any restricted stock units will specify whether units that become earned and payable will be settled in shares of Bank of America common stock (with one share of Bank of America common stock to be delivered for each earned and payable restricted stock unit), in cash (equal to the aggregate fair market value of the restricted stock units that are earned and payable), or in a combination of shares and cash. Shares of Bank of America common stock used to pay earned restricted stock units may have additional restrictions, as determined by the Compensation and Benefits Committee. Unpaid restricted stock units may have dividend equivalent rights,

as determined by the Compensation and Benefits Committee and evidenced in the award agreement. As with restricted stock shares, awards of restricted stock units made to senior management for performance in 2007 and later years include dividend equivalents that accrue with interest from the grant date and are paid only if and when the underlying award becomes vested. Unpaid restricted stock units have no voting rights.

The Amended Stock Plan, like the current Stock Plan, places limits on the use of restricted stock shares and restricted stock units:

- From and after February 28, 2010, no more than 504.1 million shares of Bank of America common stock may be awarded under the Amended Stock Plan as restricted stock shares or restricted stock units. This 504.1 million shares is comprised of the approximately 4.1 million shares that were available for awards of restricted stock shares or units as of February 28, 2010 under the current Stock Plan plus the 500 million additional shares to be added to the plan if the Amended Stock Plan is approved by the stockholders. This limit is subject to adjustment for prior awards of restricted stock shares or restricted stock units that are canceled, forfeited or settled in cash, as described under "Number of Shares" above.
- In addition, if this restricted stock pool is exhausted, the Amended Stock Plan permits the use of any remaining shares otherwise available for awards of stock options or SARs to be used for awards of restricted stock shares or restricted stock units. However, each such additional award of restricted stock shares or restricted stock units will count as 2.5 shares against the remaining available pool for stock options or SARs. This provision is unchanged from the current Stock Plan.

Minimum Vesting Conditions

For stock-settled awards intended to vest solely on the basis of the passage of time, the awards will not vest more quickly than ratably over a three-year period beginning on the first anniversary of the award. Awards may vest more quickly in the event of (a) death, disability or retirement, (b) job loss due to workforce reduction, job elimination or divestiture or (c) under the "change in control" provisions of the Amended Stock Plan. The following awards will not be subject to a minimum time-based vesting requirement: (i) awards that become vested upon the achievement of performance goals over a period of at least one year, (ii) awards of restricted stock shares or units made in lieu of annual incentive compensation (because these awards are already based on an annual review of performance) and (iii) awards necessary in the recruitment of new key associates or for the retention of key associates in connection with a business combination.

Stock Plan Benefits Table

Because awards under the Amended Stock Plan are discretionary, awards are generally not determinable at this time. The following table presents information on Bank of America's equity compensation plans at December 31, 2009:

Plan Category (1) (2)	Number of Shares to be Issued Under Outstanding Options and Rights (3)	Weighted Average Exercise Price of Outstanding Options (4)	Number of Shares Remaining for Future Issuance Under Equity Compensation Plans
Plans approved by the Corporation's shareholders	286,824,064	\$ 40.53	283,604,110(5)
Plans not approved by the Corporation's shareholders (6)	126,222,932	\$ 66.99	49,092,032(7)
Total	413,046,996	\$ 48.11	332,696,142

- (1) This table does not include outstanding options to purchase 14,078,269 shares of the Corporation's common stock that were assumed by the Corporation in connection with prior acquisitions, under whose plans the options were originally granted. The weighted average option price of these assumed options was \$73.55 at December 31, 2009. Also, at December 31, 2009 there were 324,681 vested deferred restricted stock units associated with these plans. No additional awards were granted under these plans following the respective dates of acquisition.

- (2) This table does not include outstanding options to purchase 13,726,608 shares of the Corporation's common stock that were assumed by the Corporation in connection with the Merrill Lynch acquisition, which were originally issued under certain Merrill Lynch plans. The weighted average option price of these assumed options was \$57.50 at December 31, 2009. Also, at December 31, 2009 there were 27,242,816 outstanding restricted stock units and 1,980,847 vested deferred restricted stock units and stock option gain deferrals associated with such plans. These Merrill Lynch plans were frozen at the time of the acquisition and no additional awards may be granted under these plans. However, as previously approved by the Corporation's shareholders, if any of the outstanding awards under these frozen plans subsequently are cancelled, forfeited or settled in cash, the shares relating to such awards thereafter will be available for future awards issued under the Key Associate Stock Plan.
- (3) Includes 89,089,935 outstanding restricted stock units and 834,728 vested deferred restricted stock units under plans approved by the Corporation's shareholders and 47,204,462 outstanding restricted stock units under plans not approved by the Corporation's shareholders.
- (4) Does not reflect restricted stock units included in the first column, which do not have an exercise price.
- (5) Includes 282,870,925 shares of common stock available for future issuance under the Key Associate Stock Plan (including 9,479,676 shares originally subject to awards outstanding under frozen Merrill Lynch plans at the time of the acquisition which subsequently have been cancelled, forfeited or settled in cash and become available for issuance under the Key Associate Stock Plan, as described in note (2) above) and 733,185 shares of common stock which are available for future issuance under the Corporation's Directors' Stock Plan.
- (6) In connection with the Merrill Lynch acquisition, the Corporation assumed and has continued to issue awards in accordance with applicable NYSE listing standards under the following plans, which were not approved by the Corporation's shareholders: the Merrill Lynch Employee Stock Compensation Plan (the "ESCP") and the Merrill Lynch Employee Stock Purchase Plan (the "ESPP"), both of which were approved by Merrill Lynch's shareholders prior to the acquisition. The material features of these plans are described below.
- (7) This amount includes 36,661,929 shares of common stock available for future issuance under the ESCP and 12,430,103 shares of common stock available for future issuance under the ESPP.

The Corporation has certain stock-based compensation plans that were not approved by its stockholders. These plans are the ESCP and the ESPP. Descriptions of the material features of these plans follow.

Merrill Lynch Employee Stock Compensation Plan. The ESCP covers associates who were salaried key employees of Merrill Lynch or its subsidiaries immediately prior to the effective date of the Merrill Lynch acquisition, other than executive officers. Under the ESCP, the Corporation may award restricted shares, restricted units, incentive stock options, nonqualified stock options and stock appreciation rights. Awards of restricted shares and restricted units are subject to a vesting schedule specified in the grant documentation. Restricted shares and restricted units under the ESCP may generally be cancelled prior to the vesting date in the event of (i) violation of covenants specified in the grant documentation (including, but not limited to, non-competition, non-solicitation, nondisparagement and confidentiality covenants) or (ii) termination of employment prior to the end of the vesting period (except in certain limited circumstances, such as death, disability and retirement). Options have an exercise price equal to the fair market value of the stock on the date of grant. Options granted under the ESCP expire not more than 10 years from the date of grant, and the applicable grant documentation specifies the extent to which options may be exercised during their respective terms, including in the event of an associate's death, disability or termination of employment. Shares that are cancelled, forfeited or settled in cash from an additional frozen Merrill Lynch plan also will become available for grant under the ESCP.

Merrill Lynch Employee Stock Purchase Plan. The purpose of the ESPP is to give employees of Merrill Lynch and its eligible subsidiaries an opportunity to purchase the Corporation's common stock through payroll deductions (an employee can elect either payroll deductions of 1% to 10% of current compensation or an annual dollar amount equal to a maximum of 10% of current eligible compensation). Shares are purchased quarterly at 95% of the fair market value (average of the highest and lowest share prices) on the date of the purchase and the maximum annual contribution is \$23,750. An associate is eligible to participate if he or she was employed by Merrill Lynch or any participating subsidiary for at least one full year by the start of the new plan year.

The following information provides an update to the Bank of America information as of February 28, 2010:

- There were approximately 276.0 million stock options outstanding with a weighted average exercise price of \$50.47 per share and a weighted average remaining term of 4.19 years.
- There were approximately 186.1 million unvested shares of restricted stock and share-settled restricted stock units outstanding, including vested deferred restricted stock units and shares of restricted stock and share-settled restricted stock units previously granted as part of annual incentive awards under Bank of America's Equity Incentive Plan, Executive Incentive Compensation Plan or other annual incentive programs.
- The total of unvested shares of restricted stock above does not include approximately 69.3 million shares that were granted in February 2010 in lieu of a portion of incentive cash compensation to certain associates as part of their normal year-end incentive payments. These awards were made as part of our TARP repayment and were vested upon grant, but they remain subject to transfer and other restrictions. Restrictions on half of these shares will be lifted in August 2010 and restrictions on the remaining half of the shares will be lifted in August 2011. These shares are included in common shares outstanding as of February 28, 2010.
- There were approximately 97.4 million shares that remain available for awards of future grants, of which approximately 39.7 million shares are available for awards under the current Stock Plan, approximately 57.0 million shares are available under the ESCP and approximately 733 thousand shares are available for awards under the Directors' Stock Plan. Of the shares under the current Stock Plan, no more than approximately 4.1 million shares may be granted as awards of restricted stock shares or restricted stock units (on a one-for-one share basis).
- If the additional 500 million shares are approved, all such shares will be available for restricted stock awards.

Overhang

The Compensation and Benefits Committee regularly reviews the dilutive effect of the Stock Plan on Bank of America's stockholders (sometimes called "overhang"), and compares this level of overhang against the level of overhang at its primary competitor group, made up of five leading United States financial services companies, as further described under "Competitor Groups" in the Compensation Discussion and Analysis at page 35. As of 2009, the most current available data, Bank of America's overhang was significantly lower than the median for this competitor group.

As of February 28, 2010, assuming approval of the Amended Stock Plan, Bank of America's total overhang would be 9.56%.

For the purpose of calculating the overhang in the previous paragraph, Bank of America is using "fully diluted overhang," which equals Amount A divided by Amount B, where Amount A equals the sum of all outstanding stock options, unvested restricted stock units and unvested restricted stock shares plus shares available for future grants under all plans, and Amount B equals the sum of total shares of Bank of America common stock outstanding plus Amount A less unvested restricted stock shares. As of February 28, 2010: (i) the number of outstanding stock options, unvested restricted stock units and unvested restricted stock shares equals approximately 462.1 million; (ii) the number of shares available for future grants under all plans assuming approval of the Amended Stock Plan equals approximately 597.4 million; (iii) the number of shares of Bank of America common stock outstanding equals approximately 10.032 billion; and (iv) the number of unvested restricted stock shares is approximately 5.3 million (which are already included in Bank of America common stock outstanding).

Run Rate

The Compensation and Benefits Committee reviews throughout the year the rate at which Bank of America is granting equity awards relative to its shares of Bank of America common stock outstanding (sometimes referred to as Bank of America's "run rate"), and compares this run rate to the run rates at Bank of America's primary competitor group. As of 2009, the most current available data, Bank of America's run rate was the lowest in this competitor group. Over the past three calendar years (2007-2009), the annual share usage has averaged less than 1.2% of common shares outstanding.

Internal Revenue Code Section 162(m)

Section 162(m) of the Code generally places a \$1 million annual limit on a company's tax deduction for compensation paid to the principal executive officer or any of the three most highly compensated officers other than the principal executive officer or principal financial officer, referred to as the "covered individuals." This limitation does not apply, however, to "qualified performance-based compensation." Because stock options or SARs granted under the Amended Stock Plan must have an exercise price equal at least to fair market value at the date of grant, are granted to covered individuals by a Compensation and Benefits Committee consisting of at least two outside directors, and the Amended Stock Plan limits the number of shares that may be the subject of awards granted to any key associate during any calendar year, compensation from the exercise of stock options or SARs should be treated as "qualified performance-based compensation" for purposes of Section 162(m).

In addition, the Amended Stock Plan authorizes the Compensation and Benefits Committee to make awards of restricted stock shares or restricted stock units that are conditioned on the satisfaction of performance criteria. For those awards intended to meet the requirements of the "qualified performance-based compensation" exception to Section 162(m), the Compensation and Benefits Committee must establish the applicable performance conditions prior to or within a specified period after the start of the applicable performance period. The Compensation and Benefits Committee may select from the following performance measures for this purpose:

- total revenue (defined as the sum of net interest income on a taxable-equivalent basis and noninterest income);
- net income;
- shareholder value added (which equals the cash basis operating earnings for a year less a charge for the use of capital for the year);
- return on average common stockholders' equity;
- return on average assets;
- earnings per common share (using either diluted earnings or not);
- operating earnings per common share (using either diluted earnings or not);
- total stockholder return;
- customer satisfaction (determined based on objective criteria approved by the Compensation and Benefits Committee);
- expense management;
- operating margin;
- operating leverage; or
- cash flow.

The performance conditions will be stated in the form of an objective, nondiscretionary formula, and the Compensation and Benefits Committee will certify in writing the attainment of those performance conditions prior to any payment or distributions with respect to awards. The Compensation and Benefits Committee in its discretion may adjust downward any award.

As under the current Stock Plan, in no event may an individual receive awards under the Amended Stock Plan for a given calendar year covering in excess of four million shares of Bank of America common stock.

So that options and SARs granted under the Amended Stock Plan qualify for the exclusion for performance-based compensation, and to permit the Compensation and Benefits Committee to grant other awards under the Amended Stock Plan that are intended to qualify for the exclusion, the Amended Stock Plan is being submitted to Bank of America's stockholders for approval. A vote in favor of approving the Amended Stock Plan will be a vote approving all the material terms and conditions of the plan for purposes of the performance-based exemption under Section 162(m), including the performance measures, eligibility requirements and limits on various stock awards, in each case as described above.

Withholding for Payment of Taxes

As with the current Stock Plan, the Amended Stock Plan provides for the withholding and payment by a participant of any payroll or withholding taxes required by applicable law. The Amended Stock Plan permits a participant to satisfy this requirement, with the approval of the Compensation and Benefits Committee and subject to the terms of the Amended Stock Plan, by having Bank of America withhold from the participant a number of shares of Bank of America common stock otherwise issuable under the award having a fair market value equal to the amount of applicable payroll and withholding taxes.

Changes in Capitalization and Similar Changes

As with the current Stock Plan, in the event of any change in the number of outstanding shares of Bank of America common stock by reason of any stock dividend, split, spin-off, recapitalization, merger, consolidation, combination, exchange of shares or otherwise, the aggregate number of shares of Bank of America common stock with respect to which awards may be made under the Amended Stock Plan, the annual limit on individual awards, the limits on incentive stock options, restricted stock and restricted stock units and the terms, types of shares and number of shares of any outstanding awards under the Amended Stock Plan will be equitably adjusted by the Compensation and Benefits Committee in its discretion to preserve the benefit of the award for Bank of America and the participant.

Change in Control

The current Stock Plan provides for automatic full vesting of awards upon the occurrence of a “change in control” of Bank of America (as defined in the plan). This approach is commonly referred to as “single trigger” vesting and has been a common industry practice.

The Amended Stock Plan departs from this approach. Instead, the Amended Stock Plan permits the Compensation and Benefits Committee to provide for vesting of awards in connection with a change in control of Bank of America only if there is also a termination of employment in connection with the change in control. This is often referred to as “double trigger” vesting. For these purposes, a termination is considered to be in connection with a change of control if it occurs upon or within two years after the change in control and is for one of the following two reasons: (i) an involuntary termination by the company without “cause” or (ii) a termination by the participant for “good reason.” “Cause” and “good reason” will be as defined in the applicable award agreements. In addition, the Committee may provide for the assumption or substitution of awards by a surviving corporation.

Amendment and Termination of the Plan

The Bank of America board of directors has the power to amend, modify or terminate the Amended Stock Plan on a prospective basis. Stockholder approval will be obtained for any change to the material terms of the Amended Stock Plan to the extent required by NYSE listing requirements, Code Section 162(m), or other applicable law.

Option Repricing Prohibited

As under the current Stock Plan, the Amended Stock Plan specifically prohibits the re-pricing of stock options or SARs without stockholder approval. For this purpose, a “repricing” means any of the following (or any other action that has the same effect as any of the following): (A) changing the terms of a stock option or SAR to lower its exercise price; (B) any other action that is treated as a “repricing” under generally accepted accounting principles; and (C) repurchasing for cash or canceling a stock option or SAR at a time when its exercise price is greater than the fair market value of the underlying stock in exchange for another award, unless the cancellation and exchange occurs in connection with change in capitalization or similar change. Such cancellation and exchange would be considered a “repricing” regardless of whether it is treated as a “repricing” under generally accepted accounting principles and regardless of whether it is voluntary on the part of the key associate.

Federal Income Tax Treatment

The following discussion summarizes certain U.S. federal income tax consequences of awards under the Amended Stock Plan based on the law as in effect on the date of this proxy statement. The following discussion does not purport to cover federal employment taxes or other federal tax consequences that may be associated with awards, nor does it cover state, local or non-U.S. taxes.

Incentive Stock Options. Options granted under the Amended Stock Plan and intended to qualify as incentive stock options will be subject to the applicable provisions of the Code, including Section 422. If shares of Bank of America's common stock are issued to an optionee upon the exercise of an incentive stock option, if no "disqualifying disposition" of the shares is made by the optionee within one year after the exercise of the incentive stock option or within two years after the date the incentive stock option was granted, and if the options otherwise satisfy all applicable requirements under the Code to qualify as incentive stock options, then (a) no income will be recognized by the optionee at the time of the grant of the incentive stock option, (b) no income, for regular income tax purposes, will be realized by the optionee at the date of exercise, (c) upon sale of the shares of Bank of America's common stock acquired by exercise of the incentive stock option, any amount realized in excess of the option price will be taxed to the optionee, for regular income tax purposes, as a capital gain (at varying rates depending upon the optionee's holding period in the shares and income level) and any loss sustained will be a capital loss, and (d) no deduction will be allowed to Bank of America for federal income tax purposes. If a "disqualifying disposition" of the shares is made, the optionee will realize taxable ordinary income in an amount equal to the excess of the fair market value of the shares purchased at the time of exercise over the option price (the bargain purchase element) and Bank of America will be entitled to a federal income tax deduction equal to that amount. The amount of any gain in excess of the bargain purchase element realized upon a "disqualifying disposition" will be taxable as capital gain at that time to the holder (at varying rates depending upon the holder's holding period in the shares and income level), for which Bank of America will not be entitled to a federal tax deduction. Upon exercise of an incentive stock option, the optionee may be subject to alternative minimum tax.

Nonqualified Stock Options. With respect to nonqualified stock options granted to optionees under the Amended Stock Plan, in general (a) the optionee will realize no income at the time the nonqualified stock option is granted, (b) at exercise, the optionee will realize ordinary income in an amount equal to the difference between the option price and the fair market value of the shares on the date of exercise, and Bank of America will receive a tax deduction for the same amount and (c) on disposition, the holder will treat appreciation or depreciation after the date of exercise as capital gain or loss and taxed at varying rates depending upon the holder's holding period in the shares and income level.

Restricted Stock Shares. Upon becoming entitled to receive shares at the end of the applicable restricted period without a forfeiture, the recipient will have ordinary income in an amount equal to the fair market value of the shares at that time. However, a recipient who so elects under Code Section 83(b) within 30 days after the date of the grant will have ordinary income on the date of the grant equal to the fair market value of the restricted stock shares as if the shares were unrestricted and could be sold immediately. If the shares subject to the election are subsequently forfeited, the recipient will not be entitled to any deduction, refund or loss for tax purposes. Upon the sale of the shares after the forfeiture period has expired, the holding period to determine whether the recipient has long-term or short-term capital gain or loss will begin when the restricted period expires, and the tax basis will be equal to the fair market value of the shares when the restricted period expires. However, if the recipient timely elects under Section 83(b) to be taxed as of the date of grant, the holding period will commence on the date of the grant and the tax basis will be equal to the fair market value of the shares on the date of the grant as if the shares were then unrestricted and could be sold immediately. Bank of America generally will be entitled to a deduction equal to the amount that is taxable as ordinary compensation income to the recipient.

Restricted Stock Units. A participant who is awarded restricted stock units will not recognize income and Bank of America will not be allowed a deduction at the time the award is made. When a participant receives payment for restricted stock units in shares of Bank of America's common stock or cash, the fair market value of the shares or the amount of the cash received will be ordinary income to the participant and will be allowed as a deduction for federal income tax purposes to Bank of America. However, if there is a substantial risk that any shares of Bank of America's common stock used to pay out earned restricted stock units will be forfeited (for example, because the Compensation and Benefits Committee conditions those shares on the performance of future services), the taxable event will be deferred until the risk of forfeiture lapses. In this case, the participant can elect to make an election

under Section 83(b) of the Code as previously described. Bank of America can take the deduction at the time the ordinary income is recognized by the participant.

**Bank of America Corporation
2003 Key Associate Stock Plan,
As Amended and Restated**

Original Effective Date: January 1, 2003
Amended and Restated Effective Date: April 28, 2010

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**Bank of America Corporation
2003 Key Associate Stock Plan,
As Amended and Restated**

Article 1. Establishment, Duration and Purpose

1.1 Establishment and Duration of the Plan The Company originally established this Plan effective as of January 1, 2003, and the Plan as originally established was approved by the Company's stockholders. The Plan has been subsequently amended and restated effective April 1, 2004 (in connection with the merger with FleetBoston Financial Corporation), and further amended on April 26, 2006 (in connection with the merger with MBNA Corporation) and December 5, 2008 (in connection with the merger with Merrill Lynch & Co., Inc.), and in each case such actions were approved by the Company's stockholders. This Plan is hereby being further amended and restated, subject to and effective upon the approval of the Company's stockholders at the annual meeting of stockholders on April 28, 2010. The purpose of amending and restating the Plan is to (i) authorize the issuance of additional Shares under the Plan, (ii) extend the term of the Plan by two years and (iii) make certain other design changes consistent with changes in the economic and business environment since the Plan was last amended. The Plan as amended and restated shall remain in effect until the earlier (i) the date that no additional Shares are available for issuance under the Plan, (ii) the date that the Plan has been terminated in accordance with Article 14 or (iii) the close of business on December 31, 2015.

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

Article 2. Definitions

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

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

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

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

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

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

(a) The acquisition by any Person of Beneficial Ownership of twenty-five percent (25%) or more of either:

(i) The then-outstanding Shares (the "Outstanding Shares"); or

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

provided, however, that the following acquisitions shall not constitute a Change in Control for purposes of this subparagraph (a): (A) any acquisition directly from the Company, (B) any acquisition by the Company or any

of its Subsidiaries, (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its Subsidiaries, or (D) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subparagraph (c) below; or

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

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

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

Notwithstanding the foregoing, for any Awards that constitute nonqualified deferred compensation within the meaning of Section 409A(d) of the Code and provide for an accelerated payment in connection with a Change in Control, Change in Control shall have the same meaning as set forth in any regulations, revenue procedure, revenue rulings or other pronouncements issued by the Secretary of the United States Treasury pursuant to Section 409A of the Code, applicable to such arrangements.

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

“**Committee**” means the Compensation Committee of the Board of Directors; provided, however, that (i) with respect to Awards to any Key Associates who are Insiders, Committee means all of the members of the Compensation Committee who are “non-employee directors” within the meaning of Rule 16b-3 adopted under the

Exchange Act, and (ii) with respect to Awards to any Key Associates who are Named Executive Officers intended to comply with the Performance-Based Exception, Committee means all of the members of the Compensation Committee who are “outside directors” within the meaning of Section 162(m) of the Code. Committee may also mean any individual or committee of individuals (who need not be Directors) that the Compensation Committee may appoint from time to time to administer the Plan with respect to Awards to Key Associates who are not Insiders or Named Executive Officers, in accordance with and subject to the requirements of Section 3.2.

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

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

“**Disability**” with respect to a Participant, means “disability” as defined from time to time under any long-term disability plan of the Company or Subsidiary with which the Participant is employed. Notwithstanding the foregoing, for any Awards that constitute nonqualified deferred compensation within the meaning of Section 409A(d) of the Code and provide for an accelerated payment in connection with any Disability, Disability shall have the same meaning as set forth in any regulations, revenue procedure, revenue rulings or other pronouncements issued by the Secretary of the United States Treasury pursuant to Section 409A of the Code, applicable to such arrangements.

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

“**Effective Date**” means January 1, 2003.

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

“**Fair Market Value**” of a Share on any date means the closing price of a Share as reflected in the report of composite trading of New York Stock Exchange listed securities for that day (or, if no Shares were publicly traded on that day, the immediately preceding day that Shares were so traded) published in The Wall Street Journal [Eastern Edition] or in any other publication selected by the Committee; provided, however, that if the Shares are misquoted or omitted by the selected publication(s), the Committee shall directly solicit the information from officials of the stock exchanges or from other informed independent market sources.

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

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

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

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

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

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

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

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

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

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

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

“Period of Restriction” means the period during which the transfer of Shares of Restricted Stock or an Award of Restricted Stock Units is limited in some way (based on the passage of time, the achievement of performance goals, or upon the occurrence of other events as determined by the Committee, at its discretion), and the Shares of Restricted Stock or the Restricted Stock Units are subject to a substantial risk of forfeiture, as provided in Article 8 herein and subject to Section 3.4.

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

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

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

“Restricted Stock” means an Award of Shares, subject to a Period of Restriction (except as set forth in Section 3.4), that is granted to a Key Associate under Article 8 herein.

“Restricted Stock Unit” means an Award, subject to a Period of Restriction (except as set forth in Section 3.4), that is granted to a Key Associate under Article 8 herein and is settled either (i) by the delivery of one (1) Share for each Restricted Stock Unit or (ii) in cash in an amount equal to the Fair Market Value of one (1) Share for each Restricted Stock Unit, all as specified in the applicable Award Agreement. The Award of a Restricted Stock Unit represents the mere promise of the Company to deliver a Share or the appropriate amount of cash, as applicable, at the end of the Period of Restriction (or such later date as provided by the Award Agreement) in accordance with and subject to the terms and conditions of the applicable Award Agreement, and is not intended to constitute a transfer of “property” within the meaning of Section 83 of the Code.

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

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

“Shareholder Value Added” means the “shareholder value added” performance measure of the Company for a year that would be reported in the Company’s Annual Report to Stockholders or Annual Report on Form 10-K for

the year. In that regard, Shareholder Value Added for a year equals the cash basis operating earnings for the year less a charge for the use of capital for the year. For purposes of any Award intended to satisfy the Performance-Based Exception incorporating Shareholder Value Added as a performance criteria, the Committee shall approve the charge for the use of capital for use in determining Shareholder Value Added for the year within the time required under Code Section 162(m).

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

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

“Subsidiary” means any corporation, partnership, joint venture, affiliate, or other entity in which the Company owns more than fifty percent (50%) of the voting stock or voting ownership interest, as applicable, or any other business entity designated by the Committee as a Subsidiary for purposes of the Plan.

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

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

Article 3. Administration

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

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

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

3.4 Limitation on Vesting for Awards. Notwithstanding any provision of the Plan to the contrary, any stock-settled Award that vests solely on the basis of the passage of time (e.g., not on the basis of achievement of performance goals) shall not vest more quickly than ratably over the three (3) year period beginning on the first anniversary of the Award, except that the Award may vest sooner under any of the following circumstances as more specifically set forth in the applicable Award Agreement: (i) the Participant’s death, (ii) the Participant’s Disability, (iii) the Participant’s “retirement” as defined in the Award Agreement consistent with the Company’s retirement policies and programs, (iv) a Participant’s termination of employment with the Company and its Subsidiaries due to workforce reduction, job elimination or divestiture as determined by the Committee, (v) a

Change in Control consistent with the provisions of Article 13 hereof or (vi) in connection with establishing the terms and conditions of employment of a Key Associate necessary for the recruitment of the Key Associate or as the result of a business combination or acquisition by the Company or any of its Subsidiaries. The provisions of this Section 3.4 shall not apply, and in that regard no Period of Restriction is required to apply, to any Award of Restricted Stock or Restricted Stock Units that is made to a Key Associate as a portion of the Key Associate's annual incentive compensation under the Company's Equity Incentive Plan, Executive Incentive Compensation Plan, or any similar plan or program as determined by the Committee applicable to any Key Associate, including any such program applicable to an Insider or Named Executive Officer. The provisions of this Section 3.4 shall not apply to any Award that becomes vested based on the achievement of performance goals over a period of at least one year.

Article 4. Shares Subject to the Plan

4.1 Number of Shares Available for Grants. Subject to the provisions of this Article 4, the aggregate number of Shares available for grants of Awards under the Plan shall not exceed the sum of (A) two hundred million (200,000,000) Shares plus (B) the number of Shares available for awards under the Prior Plan as of December 31, 2002 plus (C) any Shares that were subject to an award under the Prior Plan which award is canceled, terminates, expires or lapses for any reason from and after the Effective Date plus (D) effective as of April 1, 2004, one hundred two million (102,000,000) Shares plus (E) effective upon April 26, 2006, one hundred eighty million (180,000,000) Shares plus (F) effective upon January 1, 2009, one hundred five million (105,000,000) Shares plus (G) any Shares that were subject to an award under the Merrill Lynch & Co., Inc. Long Term Incentive Compensation Plan for Executive Officers or the Merrill Lynch Financial Advisor Capital Accumulation Award Plan which award is canceled, terminates, expires, lapses or is settled in cash for any reason from and after January 1, 2009, plus (H) effective upon April 28, 2010 (subject to stockholder approval), five hundred million (500,000,000) Shares.

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

4.3 No Net Counting of Options or SARs Counting of Shares Used to Pay Option Price and Withholding Taxes. The full number of Shares with respect to which an Option or SAR is granted shall count against the aggregate number of Shares available for grant under the Plan. Accordingly, if in accordance with the terms of the Plan, a Participant pays the Option Price for an Option by either tendering previously owned Shares or having the Company withhold Shares, then such Shares surrendered to pay the Option Price shall continue to count against the aggregate number of Shares available for grant under the Plan set forth in Section 4.1 above. In addition, if in accordance with the terms of the Plan, a Participant satisfies any tax withholding requirement with respect to any taxable event arising as a result of this Plan by either tendering previously owned Shares or having the Company withhold Shares, then such Shares surrendered to satisfy such tax withholding requirements shall continue to count against the aggregate number of Shares available for grant under the Plan set forth in Section 4.1 above.

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

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

- (i) in no event shall a Participant receive an Award or Awards during any one (1) calendar year covering in the aggregate more than four million (4,000,000) Shares (whether such Award or Awards may be settled in Shares, cash or any combination of Shares and cash);

- (ii) in no event shall there be granted during the term of the Plan Incentive Stock Options covering more than an aggregate of forty million (40,000,000) Shares;
- (iii) in no event shall there be granted after February 28, 2010, Shares of Restricted Stock or Restricted Stock Units covering more than an aggregate of:
 - (A) five hundred million (500,000,000) Shares plus the number of Shares that were available under this subparagraph (iii) as of February 28, 2010, plus
 - (B) the number of Shares covering any Award of Restricted Stock or Restricted Stock Units made under this subparagraph (iii) that was outstanding as of, or that is made after, February 28, 2010 that again become available for issuance under Section 4.2 above because the Award is canceled, terminates, expires, or lapses for any reason or that is settled in cash; plus
 - (C) the number of Shares that were subject to an award under the Merrill Lynch & Co., Inc. Long Term Incentive Compensation Plan for Executive Officers or the Merrill Lynch Financial Advisor Capital Accumulation Award Plan which award is canceled, terminates, expires, lapses or is settled in cash for any reason from and after the closing of the merger between the Company and Merrill Lynch & Co., Inc., if such award had been originally awarded as a Merrill Lynch restricted stock share or unit;

provided, however, that in the event the full number of Shares under this subparagraph (iii) have been used, the Company may grant additional Shares of Restricted Stock or Restricted Stock Units from the remaining available Shares for grants under Section 4.1 with each such Share of Restricted Stock or Restricted Stock Unit counting as 2.50 Shares against such remaining available Shares under Section 4.1.

4.6 Adjustments in Authorized Shares. In the event of any change in corporate capitalization, such as a stock split, or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other distribution of stock or property of the Company, any reorganization (whether or not such reorganization comes within the definition of such term in Code Section 368) or any partial or complete liquidation of the Company, such adjustment shall be made in the number and class of Shares which may be issued under the Plan and in the number and class of and/or price of Shares subject to outstanding Awards granted under the Plan, as may be determined to be appropriate and equitable by the Committee, in its sole discretion, to prevent dilution or enlargement of rights; provided, however, that (i) the number of Shares subject to any Award shall always be a whole number and (ii) such adjustment shall be made in a manner consistent with the requirements of Code Section 409A in order for any Options or SARs to remain exempt from the requirements of Code Section 409A.

4.7 Source of Shares. Shares issued under the Plan may be original issue shares, treasury stock or shares purchased in the open market or otherwise, all as determined by the Chief Financial Officer of the Company (or the Chief Financial Officer's designee) from time to time, unless otherwise determined by the Committee.

Article 5. Eligibility and Participation

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

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

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

Article 6. Stock Options

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

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

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

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

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

6.6 Payment. Options shall be exercised by the delivery of a notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares. To be effective, notice of exercise must be made in accordance with procedures established by the Company from time to time.

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

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

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

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

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

shall fail to make a testamentary disposition of the Option or shall have died intestate, by the Participant's executor or other legal representative.

6.9 Nontransferability of Options.

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

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

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

6.11 No Dividend Equivalents. In no event shall any Award of Options granted under the Plan include any dividend equivalents with respect to such Award.

Article 7. Stock Appreciation Rights

7.1 Grant of SARs. Subject to the terms and conditions of the Plan, SARs may be granted to Key Associates at any time and from time to time as shall be determined by the Committee. The Committee shall have complete discretion in determining the number of SARs granted to each Participant (subject to Article 4 herein) and, consistent with the provisions of the Plan, in determining the terms and conditions pertaining to such SARs. The grant price of an SAR shall be at least equal to the Fair Market Value of a Share on the date of grant of the SAR.

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

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

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

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

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

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

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

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

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

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

7.10 No Dividend Equivalents. In no event shall any Award of SARs granted under the Plan include any dividend equivalents with respect to such Award.

Article 8. Restricted Stock and Restricted Stock Units

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

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

8.3 Transferability. Except as provided in this Article 8, the Shares of Restricted Stock or Restricted Stock Units granted herein may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction established by the Committee and specified in the Award Agreement, or upon earlier satisfaction of any other conditions, as specified by the Committee in its sole discretion and set forth in the Award Agreement. All rights with respect to the Restricted Stock or Restricted Stock Units granted to a Participant under the Plan shall be available during his or her lifetime only to such Participant.

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

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

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

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

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

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

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

Article 9. Performance Measures

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

- Earnings Per Share;
- Net Income;
- Operating Earnings Per Share;
- Return On Assets;
- Return On Equity;
- Shareholder Value Added;
- Total Revenue;
- Total Stockholder Return;
- customer satisfaction (determined based on objective criteria approved by the Committee);
- expense management;
- operating margin;
- operating leverage; or
- cash flow.

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

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

Article 10. Beneficiary Designation

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

Article 11. Deferrals

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

Article 12. Rights of Key Associates

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

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

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

Article 13. Change in Control

13.1 Treatment of Outstanding Awards. Unless otherwise specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges, the Committee may, in its sole discretion, at the time an Award is made hereunder or at any time prior to, coincident with or after the time of a Change in Control take one of the following actions which shall apply only upon the occurrence of a Change in Control or, if later, upon the action being taken:

- (a) provide for the acceleration of any time periods, or the waiver of any other conditions, relating to the vesting, exercise, payment or distribution of an Award so that any Award to a Participant whose employment has been terminated as a result of a Change in Control may be vested, exercised, paid or distributed in full on or before a date fixed by the Committee, and in connection therewith the Committee may (i) provide for an extended period to exercise Options (not to exceed the original Option term) and (ii) determine the level of attainment of any applicable performance goals;
- (b) provide for the purchase of any Awards from a Participant whose employment has been terminated as a result of a Change in Control, upon the Participant's request, for an amount of cash equal to the amount that could have been obtained upon the exercise, payment or distribution of such rights had such Award been currently exercisable or payable; or
- (c) cause the Awards then outstanding to be assumed, or new rights substituted therefore, by the surviving corporation in such Change in Control.

For purposes of sub-paragraphs (a) and (b) above, any Participant whose employment is either (i) terminated by the Company other than for “cause,” or (ii) terminated by the Participant for “good reason” (each as defined in the applicable Award Agreement), in either case upon, or on or prior to the second anniversary of, a Change in Control, shall be deemed to have been terminated as a result of the Change in Control.

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

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

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

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

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

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

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

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

(c) At the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of the Participant pursuant to this Plan which should not have been so paid or distributed (“Overpayment”) or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of the Participant pursuant to this Plan could have been so paid or distributed (“Underpayment”), in each case, consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based either upon the assertion of a deficiency by the Internal Revenue Service against the Company or the Participant which the Accounting Firm

believes has a high probability of success or controlling precedent or other substantial authority, determines that an Overpayment has been made, any such Overpayment paid or distributed by the Company to or for the benefit of the Participant shall be treated for all purposes as a loan ab initio to the Participant which the Participant shall repay to the Company together with interest at the applicable Federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no such loan shall be deemed to have been made and no amount shall be payable by the Participant to the Company if and to the extent (i) such deemed loan and payment would not either reduce the amount on which the Participant is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes or (ii) the Participant is subject to the prohibition on personal loans under Section 402 of the Sarbanes-Oxley Act of 2002.

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

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

Article 14. Amendment, Modification, and Termination

14.1 Amendment, Modification, and Termination. The Board may at any time and from time to time, alter, amend, suspend or terminate the Plan in whole or in part; provided, however, that an amendment to the Plan may be conditioned on the approval of the stockholders of the Company if and to the extent the Board determines that stockholder approval is necessary or appropriate.

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

14.3 Acceleration of Award Vesting; Waiver of Restrictions. Notwithstanding any provision of this Plan or any Award Agreement provision to the contrary, the Committee, in its sole and exclusive discretion, shall have the power at any time to (i) accelerate the vesting of any Award granted under the Plan, including, without limitation, acceleration to such a date that would result in said Awards becoming immediately vested, or (ii) waive any restrictions of any Award granted under the Plan; provided, however, that in no event shall the Committee accelerate the vesting or waive the restrictions on (A) any Award to an individual who is an Insider or Named Executive Officer or (B) Awards with respect to an aggregate of more than twenty million (20,000,000) Shares.

14.4 No Repricing. Notwithstanding any provision herein to the contrary, the repricing of Options or SARs is prohibited without prior approval of the Company's stockholders. For this purpose, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (A) changing the terms of an Option or SAR to lower its Option Price or grant price; (B) any other action that is treated as a "repricing" under generally accepted accounting principles; and (C) repurchasing for cash or canceling an Option or SAR at a time when its Option Price or grant price is greater than the Fair Market Value of the underlying Shares in exchange for another Award, unless the cancellation and exchange occurs in connection with a change in capitalization or similar change under Section 4.6 above. Such cancellation and exchange would be considered a "repricing" regardless of whether it is treated as a "repricing" under generally accepted accounting principles and regardless of whether it is voluntary on the part of the Participant.

Article 15. Withholding

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

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

Article 16. Indemnification

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

Article 17. Successors

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

Article 18. Legal Construction

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

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

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

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

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

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

18.7 Compliance With Code Section 409A. The Plan is intended to comply with Code Section 409A, to the extent applicable. Notwithstanding any provision of the Plan to the contrary, the Plan shall be interpreted, operated and administered consistent with this intent. In that regard, and notwithstanding any provision of the Plan to the contrary, the Company reserves the right to amend the Plan or any Award granted under the Plan, by action of the Committee, without the consent of any affected Participant, to the extent deemed necessary or appropriate for purposes of maintaining compliance with Code Section 409A and the regulations promulgated thereunder.