



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 3, 2010

Phillip A. Wertz, Esq.
Assistant General Counsel
Bank of America Corporation
NC1-002-29-01
Legal Department
101 S. Tryon Street
Charlotte, North Carolina 28255

Dear Mr. Wertz:

This is in response to the request by Bank of America Corporation (“BAC”), on behalf of its subsidiary, Bank of America, National Association (“BANA”), for an exemption from section 23A of the Federal Reserve Act and the Board’s Regulation W to permit BANA to purchase two credit facilities originated by its affiliate, Merrill Lynch & Company, Inc. (“Merrill Lynch”), all of Charlotte, North Carolina.

The two credit facilities relate to notes [

] (“Transferred Assets”). BAC states that consolidating the two assets in BANA would better align the ongoing business and management of the assets with the bank’s existing business unit, risk-management processes, and controls. BAC is transitioning towards a single, integrated operating model that will involve the alignment of one personnel unit to cover particular types of assets and technology platforms and to provide uniform underwriting and risk-management policies and procedures.

Section 23A and Regulation W limit the amount of “covered transactions” between a bank and any single affiliate to 10 percent of the bank’s capital stock and surplus and limit the amount of covered transactions between a bank and all its affiliates to 20 percent of the bank’s capital stock and surplus. “Covered transactions” include a bank’s purchase of assets from an affiliate and a

bank's extension of credit to an affiliate. The statute and regulation also require a bank to secure its extensions of credit to, and certain other covered transactions with, affiliates with prescribed amounts of collateral. In addition, section 23A and Regulation W prohibit a bank from purchasing low-quality assets from an affiliate.

For purposes of Regulation W,¹ the value of the assets to be purchased would be approximately []. Because the capital stock and surplus of BANA is approximately \$150.7 billion, BANA's quantitative limit per affiliate is approximately \$15 billion. Although the proposed purchase is within BANA's quantitative limits, BANA has requested the exemption because it prefers to preserve all of its capacity under the 20 percent limit to engage in transactions with all its affiliates so it can use bank resources to meet its overnight funding requirements and other contingency needs. Accordingly, BANA has requested an exemption from section 23A and Regulation W to permit it to purchase the Transferred Assets.

Section 23A and Regulation W specifically authorize the Board to exempt, in its discretion, transactions or relationships from the requirements of the statute and rule if the Board finds such exemptions to be in the public interest and consistent with the purposes of section 23A.² The Board has approved exemptions under section 23A for one-time asset transfers that are part of a corporate reorganization and that are structured to ensure the quality of the transferred assets. BANA would like to consolidate its lending relationships as part of a larger reorganization, and it believes the exemption would be in the public interest because the reorganization is expected to enhance the efficiency of its lending programs and allow BANA to better serve its clients. BAC states that transferring loans originated by Merrill Lynch into BANA will allow the company to streamline redundant business operations and enable BANA to more efficiently make and manage loans with existing customers doing business with both BANA and Merrill Lynch. Specifically, BAC would be able to better identify and manage total customer credit exposure by combining information on customers common to both BANA and Merrill Lynch. By consolidating BANA and Merrill Lynch personnel, technology platforms, and underwriting and risk-management policies and procedures for such credits, BAC also expects to realize cost savings.

¹ See 12 CFR 223.31(b).

² 12 U.S.C. § 371c(f)(2); 12 CFR 223.43(a).

BANA has committed not to purchase any low-quality assets as part of this proposal. In addition, BAC has made the following commitments to ensure the quality of the assets transferred to BANA:³

1. BAC commits, for a four-year period following the purchase of the Transferred Assets, to make either (i) a cash payment to BANA equal to the book value at the end of each calendar quarter plus write-downs during that quarter by BANA of any transferred assets that were low-quality assets at the end of that quarter; or (ii) quarterly purchases from BANA of any transferred assets that were low-quality assets at the end of that quarter at a price equal to the book value at the end of that quarter plus write-downs during that quarter by BANA of any such transferred assets. BAC will make the cash payment or will purchase the assets within 30 days after the end of each calendar quarter. BAC also commits that BANA will hold an amount of risk-based capital equal to the book value of any Transferred Assets that become low-quality as long as BANA retains ownership or control of the transferred assets. For example, under this dollar-for-dollar capital requirement, the risk-based charge for each low-quality loan would be 100 percent (equivalent to a 1250 percent risk weight), rather than the 8 percent requirement (equivalent to a 100 percent risk weight) that would apply to a similar defaulted loan asset that is not a part of the transferred asset pool.⁴
2. Before the purchase of assets is consummated, a majority of BANA's directors will review and approve the transaction.

³ See 12 CFR 223.41(d). These commitments apply to the assets transferred to BANA, any other affiliated bank and their subsidiaries, as long as the transferee owns such assets.

⁴ Once the capital pool has been allocated to specific assets, as described above, the capital cannot be applied to other low-quality assets if the initial low-quality assets return to performing status. BANA can only apply the allocated capital pool to new assets if the initial assets are fully paid or sold.

As a condition of this exemption, BANA must remain well capitalized, based on the risk-based capital guidelines of the Office of the Comptroller of the Currency ("OCC") and the modifications to those guidelines described in the above commitments. These commitments are similar to commitments relied on by the Board in previous cases, but they have been modified to clarify that the funds transferred by BAC to BANA to support any low-quality assets will provide a cushion of additional capital in excess of BANA's required regulatory capital.⁵ The commitments ensure that these funds will remain available to the bank and will not be returned to BAC through a dividend or a return of capital.

Both BAC and BANA are well capitalized and well managed and would remain so after the transaction. In addition, the OCC and the Federal Deposit Insurance Corporation ("FDIC") have reviewed the transaction and have informed the Board that they have no objection to the proposal.⁶

In light of these considerations and all the facts you have presented, this transaction appears to be consistent with safe and sound banking practices and on terms that will ensure the quality of the assets transferred and, therefore, appears to be consistent with the purposes of section 23A. Accordingly, the Director of the Division of Banking Supervision and Regulation, pursuant to authority delegated by the Board, and with the concurrence of the General Counsel, hereby grants the requested exemption.

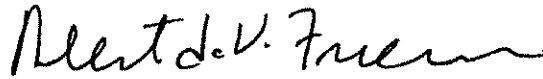
This determination is specifically conditioned on compliance by BAC and BANA with all the commitments and representations made in connection with the exemption request. These commitments and representations are deemed to be conditions imposed in writing in connection with granting the request and, as such, may be enforced in proceedings under applicable law. This determination is based on the specific facts and circumstances of the proposed transaction and may be revoked if there is a material change in those facts, circumstances, or representations or a failure by BAC or BANA to observe commitments made to the

⁵ See 12 CFR 223.41(d).

⁶ [

Board. Granting this exemption does not represent a determination concerning the permissibility of any other transactions engaged in by BAC or BANA that are subject to section 23A or Regulation W.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert deV. Frierson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert deV. Frierson
Deputy Secretary of the Board

cc: Federal Reserve Bank of Richmond
Federal Deposit Insurance Corporation
Office of Comptroller of the Currency