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Bank of America Follow Up to Brian T. Moynihan

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Commissioner

Thomas Greene
Executive Director

February 2, 2010

Via FedEx

Mr. Brian T. Moynihan
Chief Executive Officer and President
Bank of America Corporation
100 North Tryon Street
Charlotte, NC 28255

Re: Financial Crisis Inquiry Commission Hearing on January 13, 2010

Dear Mr. Moynihan:

On January 20, 2010, Chairman Angelides and Vice Chairman Thomas sent you a letter thanking you for testifying at the January 13, 2010 hearing and informing you that the staff of the FCIC would be contacting you to follow up on certain areas of your testimony and to submit written questions and requests for information related to your testimony. Please provide your answers to the following questions, and any additional information requested, by February 26, 2010.[1]

1. Did Bank of America[2] prepare any kind of internal investigation, audit, or similar review regarding its business practices, including mistakes made, that contributed to the financial problems experienced by the bank in 2008? If so, please provide the internal review. If no review was performed, please explain why.

2. Please explain Bank of America's due diligence practices regarding mortgages originated, acquired or sold, including any changes to those practices, following the September 2004 warning from the FBI about mortgage fraud.

3. Please answer the questions in the January 12, 2010 *New York Times* article by Andrew Ross Sorkin, titled "What the Financial Crisis Commission Should Ask."

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[1] The answers you provide to the questions below are a continuation of your testimony and under the same oath you took before testifying on January 13, 2010. Further, please be advised that according to section 1001 of Title 18 of the United States Code, "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

[2] As used herein, "Bank of America" refers to Bank of America Corporation and all of its affiliates and managed accounts or funds.

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4. Please answer the questions in the January 13, 2010 *New York Times* article titled "Questions for the Big Bankers."

5. Please state whether Bank of America has applied the claw-back provisions of its compensation program to any employee. Please include the reason for the claw-back, the dollar amount of the claw-back and the percentage of the individual's compensation the claw-back represented.

6. Were there any internal discussions at Bank of America in 2008 about bank solvency, the possibility of failure, or the possibility of the government coming in and rescuing the bank, providing assistance to the bank or preventing the bank from failing? Please provide records of all internal communications at Bank of America (including communications with the board of directors) in 2008 relating to the firm's solvency, the possibility of failure, the possibility of the government providing assistance to, rescuing or preventing the failure of the firm. Please also provide records of all communications in 2008 between any employee, officer, director, agent or representative of Bank of America and any third party, including outside counsel and any federal agency relating to the firm's solvency, the possibility of failure, the possibility of the government providing assistance to, rescuing or preventing the failure of the firm.

7. Please describe how Bank of America's board of directors, committees of the board of directors, internal auditors, outside auditors and regulators review, test and audit the company's risk management practices, including the value of the bank's assets and its leverage. At any point during or after 2007, did any of those entities, or any other entities, express any concern or raise any issues about the value of the bank's assets or its leverage. If yes, what were the concerns or issues, when were they raised and how did the bank respond.

8. Please provide the following information about your institution's business as an over-the-counter derivatives dealer during each of the last four years, 2006-2009:

   a. Revenues relating to the business by quarter.
   b. Profits or losses relating to the business by quarter.
   c. Percentage of the business that consisted of standardized contracts as opposed to customized contracts by quarter. Please describe how you are defining "standardized" and "customized".
   d. Positions held in all OTC derivatives contracts in notional amount at the end of each of the last four years, and positions held in each of the following categories at that time: interest rate, currency, energy, credit, and other.

9. Please provide the following information about your institution's proprietary trading during each of the last four years, 2006-2009:

    a. Describe the nature and kinds of proprietary trading your institution engaged in.
    b. The amount of proprietary trading that was speculative and the amount of such trading that was hedging your business risk.
    c. Revenues relating to the proprietary trading.
    d. Profits or losses relating to the proprietary trading.
    e. Assets held relating to proprietary trading at the end of each of the last four years.

10. If you had to identify one cause for the financial crisis, what would it be?

11. In your answers to questions at the hearing, you said that Bank of America was not too big to fail, and that you agreed that there should be some method for resolving a failing financial firm like Bank of America outside bankruptcy. How are these statements consistent? If the Bank of America is not too big to fail, why can't it simply be resolved in a bankruptcy proceeding?

12. There has been a great deal of criticism of the originate-to-distribute form of securitized financing for mortgages. In your view, does this system reduce mortgage rates and, if so, by how much?

13. To what extent did fair value or mark-to-market accounting have a role in Bank of America's problems or the financial crisis in general?

14. Please describe the difference between the operations of a bank and the operations of a bank holding company.

15. Did Bank of America acquire subprime mortgages, create pools of these mortgages and sell securities backed by these pools? If so, please provide data on the value of securities sold, whether Bank of America retained any interest in these pools, and the nature of these interests and their respective dollar amounts.

16. According to the annual report of the Community Reinvestment Coalition for 2007, Bank of America or its predecessor institutions made commitments for CRA loans of more than $1.2 trillion between 1997 and 2007. The NCRC says these commitments were made in connection with merger approvals.

    a. Can you confirm this?
    b. How many of these commitments resulted in CRA qualifying loans?
    c. What are the delinquency and default rates on these loans?

17. What were Bank of America's earnings from Credit Default Swaps (CDS) from 2006 to 2009?

18. Did Bank of America purchase any CDS protection from AIG, and on what risks?

19. It is said that CDS obligations are not visible on the balance sheets or financial statements of participants in the CDS market. If these obligations are visible to investors and creditors in your financial statements, please identify where they appear and how they are calculated.

20. Did Bank of America purchase or provide CDS protection on Lehman, and if so what were Bank of America's gains or losses, if any? What other gains or losses to Bank of America resulted from Lehman's bankruptcy, and what is the amount of such gains or losses?

21. Why did Bank of America acquire Countrywide?

22. What are the delinquency and default rates on Countrywide's subprime and Alt-A loans from the date of the acquisition to December 31, 2009?

The FCIC appreciates your cooperation in providing the information requested. Please do not hesitate to contact Chris Seefer at (202) 292-1345 or cseefer@fcic.gov if you have any questions or concerns.

Sincerely,

Thomas Greene
Executive Director, Financial Crisis Inquiry Commission

cc: Phil Angelides, Chairman, Financial Crisis Inquiry Commission

Bill Thomas, Vice Chairman, Financial Crisis Inquiry Commission

Confidential Treatment Requested

WILMERHALE

March 30, 2010

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VIA EMAIL AND MESSENGER

Thomas Greene, Esq.
Gary Cohen, Esq.
Christopher Seefer, Esq.
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006-4614

Re: Response to February 2, 2010 Request Letter

Gentlemen:

Below, please find Bank of America Corporation's ("BAC" or the "Bank") initial response to your request for information dated February 2, 2010. As we have discussed, BAC's response to this request was reprioritized in light of more time sensitive requests from the Financial Crisis Inquiry Commission ("FCIC"), and will proceed on a rolling basis. We continue to work to collect and produce additional documents and information responsive to your request and will supplement this response as soon as practicable.[1]

3. Please answer questions in the January 12, 2010 *New York Times* article by Andrew Ross Sorkin, titled "What the Financial Crisis Commission Should Ask."

(d)-(e) Given that [bonuses] come out of profits that, to a large degree, seem to be the result of government programs to prop up and stimulate the banking sector, do you think they are deserved, even if they are in stock? And . . . given the market crisis of 2008, were you all overpaid in 2007?

RESPONSE:

BAC's executive compensation program rewards sustainable, long-term performance and aligns the interests of its stockholders with the Bank's goal of attracting and retaining top talent in the highly competitive financial services industry.

The Bank's year-end compensation decisions over the last several years most clearly illustrate the direct linkage between executive officers' pay and BAC's performance. For 2007, the Compensation and Benefits Committee compensated the Bank's named executive officers for proxy disclosure purposes with respect to that year with cash and equity incentive compensation

[1] Please note that Requests 3 and 4 will be supplemented as part of BAC's rolling production. Please note, too, that we have added subparagraph lettering to Requests 3 and 4 as a convenience tool to denote the various questions appearing in the *New York Times* articles referenced in those Requests.

significantly below target levels based on performance. For 2008 and 2009, the Committee did not award the Bank's named executive officers for proxy disclosure purposes with respect to either of those years any year-end cash or equity incentive compensation.

(f) *Over the last year, your firms have actively used the Federal Reserve's discount window to exchange various investments (including C.D.O.'s) for cash. You probably have a better idea than most about what those assets now sitting on the Fed's balance sheet are worth. Given the growing calls for regular audits of the Fed . . . do you think the demands for such audits are warranted?*

RESPONSE:

BAC has not historically been an active borrower against pledge collateral under the Federal Reserve Bank Discount Window facility. BAC remains one of the most liquid institutions in the financial system and considers this a core strength.

BAC believes the current oversight of the Federal Reserve established by Congress balances the need for public accountability with strong public policy benefits that flow from maintaining the independence of the central bank's monetary policy functions and avoiding disruption to the nation's foreign and international relationships.

(g) *Please explain . . . why your firm believed it didn't have to disclose mounting losses at Merrill Lynch ahead of a shareholder vote in December 2008.*

RESPONSE:

Following an appropriate review, BAC determined that no additional disclosures were required prior to the shareholder vote for a number of reasons including:

(1) Merrill Lynch had suffered multi-billion dollar losses in each quarter since the third quarter of 2007, and while the Merrill Lynch forecasts provided to BAC projected significant losses for the fourth quarter of 2008, those projected losses were generally in line with the ones Merrill Lynch had experienced over the five previous quarters;

(2) the Merrill Lynch forecasts were not sufficiently reliable and were based in part on estimates and guesses that were subject to significant change;

(3) the proxy statement sent to BAC's shareholders contained no predictions about Merrill Lynch's performance for the fourth quarter of 2008 and, therefore, no statements that needed to be updated;

(4) both BAC and Merrill Lynch had already disclosed to the public in stark warnings that the extreme volatility and turbulent conditions in the market would continue to have an adverse impact on near-term results; and

(5) there were a number of very public events occurring in the marketplace that gave investors clear signals that the market was and would continue to be very difficult for financial institutions.

(h) And why . . . did Bank of America decide to tell the government about those same losses that it chose not to tell shareholders about?

RESPONSE:

Between December 5, 2008 (the date on which Bank of America shareholders approved the acquisition of Merrill Lynch) and December 12, 2008 (at which time Merrill Lynch was still a separately operating company), Merrill Lynch's projected losses for the fourth quarter of 2008 increased substantially. As such, the decision to approach the federal government on December 17, 2008 was the direct result of an updated forecast that was provided by Merrill Lynch to BAC on December 12, 2008 (one week after the shareholder vote had already taken place).

The updated forecast showed that Merrill Lynch's projected losses had accelerated dramatically—from $9 billion to $12.5 billion (after-tax)—in less than two weeks. Notably, the revised projected losses, among other considerations, were outside the range of Merrill's prior five quarters of losses. As a result, BAC became increasingly concerned about the possibility of even further deterioration in Merrill Lynch's financial condition and the potential impact of the projected losses on the combined company following the merger. Further, although unanticipated losses were occurring throughout the industry in the fourth quarter, it was

becoming clear, after the shareholder vote, that Merrill Lynch's losses would exceed those anticipated by comparable firms.

4. Please answer the questions in the January 13, 2010 *New York Times* article titled "Questions for the Big Bankers."

(a) Bankers are dealers in money. The Federal Reserve is a creator of money - since the crisis began in August 2007, it has conjured up $1.1 trillion. Given the ease with which these dollars are materialized on a computer screen, how can they be worth anything?

RESPONSE:

The value of the U.S. dollar is subject to a minute-by-minute market test. Since August 2007, the dollar has risen significantly against the Euro and other currencies. BAC believes the Federal Reserve's activities over the past several years have been beneficial to the functioning of our financial system and of monetary policy in the United States.

(b) The Federal Reserve's setting of its benchmark federal funds rate at nearly 1 percent in 2003 to 2004 was a primary cause of the housing and mortgage debacle. Yet, in an attempt to nurse the economy back to health, the Fed has set that rate at nearly zero percent. So what's the next bubble, and how do you intend to profit by it?

RESPONSE:

Asset bubbles by their nature are difficult to predict and they present significant risks, which need to be managed carefully. BAC's risk management techniques seek to limit exposure to high risk activities while at the same time serving customers' needs.

(c) *It still isn't clear precisely how mortgage-related losses in the financial sector grew to be many times greater than the actual losses on the mortgages themselves. What role did synthetic collateralized debt obligations - a Wall Street invention that uses credit default swaps to mimic the payments from mortgages - play in multiplying the losses? Is there any way in which a synthetic debt obligation adds value to the real economy?*

RESPONSE:

BAC agrees that excess leverage in the financial system exacerbated the financial crisis, and that it is reasonable to review the role of synthetic products and attendant levels of transparency as a partial contributor to excess leverage. Properly managed, though, synthetic debt obligations also can play a positive role in facilitating price discovery and serve as a tool for prudent risk diversification.

(d) *Goldman Sachs and other Wall Street firms argue that the clients to whom they sold mortgage-related securities were sophisticated investors who fully understood the risks. Goldman has said this was also the case when its clients bought the very same mortgage securities that Goldman, on its own behalf, was betting would default. Did these clients indeed understand all the gory details?*

RESPONSE:

BAC cannot speak for the clients of another firm.

(e) *At the height of the panic in the fall of 2008, Wall Street firms blamed short-sellers for trying to destroy them. What short positions did Wall Street firms have in one another's shares, and were they also betting against each other using credit default swaps?*

RESPONSE:

BAC cannot speak for other firms and does not have the ability to track the short positions taken by others.

(f) *Without the Troubled Asset Relief Program, Wall Street banks would not have survived the shock to the financial system that occurred in September 2008. Nor would they have subsequently accrued large profits and bonus pools in 2009. Shouldn't a substantial share of those bonus pools be sequestered on bank balance sheets for several years to increase the banks' capital levels and shield taxpayers against another bailout?*

RESPONSE:

The TARP investments and the other liquidity programs adopted by various government agencies benefited the economy by ensuring that there was sufficient liquidity in the economy and across capital markets to prevent a significant slowdown in financial activity in the United States. The beneficiaries included not only the banks who received preferred stock (and were required to repay it, with dividends), but money market funds that received guarantees, corporations that were able to continue issuing commercial paper, and small businesses and individual consumers, who were able to continue accessing credit through the banking system.

BAC has solid capital reserves, and the Bank has demonstrated in recent months its ability to raise new funds in the market, having raised approximately $50 billion in new capital in the past year. BAC has repaid all of the TARP investment with over $4 billion in profit to the government through dividends and warrant sales. BAC has also paid an additional $1.34 billion in fees to the government through its participation in programs such as TLGP (Temporary Liquidity Guarantee Program) and TAGP (Transaction Account Guarantee Program).

In 2009, the Bank underwent a comprehensive stress test administered by the federal banking regulators. Following the stress test, BAC raised $33.9 billion in capital in the private market. In the fourth quarter of 2009, BAC held a Tier 1 capital ratio of 10.40%. This is significantly higher than the 6% required by federal bank regulators to be considered "well capitalized."

The Bank's compensation program is designed to tie pay to performance. For further information about BAC's pay for performance program, please see the Compensation Discussion and Analysis section beginning on page 28 of the Bank's annual proxy statement filed with the SEC on March 17, 2010.

(g) *All deposits insured by the Federal Deposit Insurance Corporation that were held by Wall Street financial conglomerates should have been insulated in separate bank subsidiaries that were prohibited from trading, holding derivative securities and investing in risky assets like equities or bonds with less than a AAA rating. Wouldn't such safeguards have reduced excess banker risk-taking, thereby reducing the need for taxpayer bailouts?*

RESPONSE:

Roughly 31 percent of BAC's liabilities take the form of insured deposits, and that is typical for large banks, which (unlike some smaller banks) raise liabilities at market rates in the capital markets. The portions of the Glass-Steagall Act that require insured banks not to engage in securities activities have never been repealed.

BAC's securities activities are based almost exclusively in the Bank's non-bank subsidiaries and are funded by repurchase agreements (that is, collateralized borrowing) and by market debt issued by our holding company – not by insured deposits. It should also be noted that BAC paid more than $8 billion in deposit insurance assessments in 2009 to replenish losses to the Deposit Insurance Fund caused by the failure of small financial institutions.

(h) *Wall Street turbocharged the subprime mortgage boom from 2002 to 2006 by providing billions in cheap warehouse loans to non-bank lenders that otherwise had virtually no capital or financing. Had the Federal Reserve kept short-term interest rates at a more normal 4 percent to 5 percent, rather than pushing them down to 1 percent, would this not have greatly curtailed the reckless growth of subprime loans?*

RESPONSE:

The ability of subprime, non-bank lenders to access low-cost funding clearly allowed the market for subprime lending to grow and prosper outside the regulated banking system. Higher interest rates would likely have made that growth more costly and thus more difficult. Low interest rates, however, have provided many other economic benefits.

(i) *One result of the Pecora commission, the Depression equivalent of this investigation, was the Glass-Steagall Act, which kept investment banking separate from commercial banking until the act was repealed in 1999. Many experts now believe that divide should be reinstated. Yet commercial banks like Washington Mutual lost a lot of money during the crisis without having any investment banking activities, and pure investment banks like Bear Stearns and Lehman Brothers collapsed without being deposit-taking institutions. This suggests that the problem does not lie with mingling commercial and investment banking. Are you in favor of the return of Glass-Steagall, and why?*

RESPONSE:

BAC believes that the recent economic crisis shows that the integrated model can reduce rather than increase systemic risk. Financial institutions that are organized on an integrated basis also are in a position to provide more efficient service to customers and clients. Most failures that occurred in 2008 and 2009 were either small banks or standalone investment banks. Bank holding companies that provided a vast array of services largely survived or were sold to other banks, in some instances with no direct government assistance. BAC believes that properly managed bank-holding companies offer a structure that can well serve American consumers and the economy. Well-managed financial firms are able to offer an integrated suite of financing options, rather than a system of balkanized firms that that do not, or are prohibited from, offering a full range of financial services. As a result, BAC does not support reinstating Glass-Steagall.

BAC believes that the most important reforms lie in preventing regulatory arbitrage by ensuring that any product, whether offered by a bank or non-bank, is subject to the same regulation. Also, to encourage market discipline and reduce systemic risk, it is important to establish a resolution system that can accommodate the failure of any institution, regardless of size or interconnectedness.

(j) *Many people argue that the financial industry now accounts for far too much of the gross domestic product and that it is unproductive, indeed counterproductive, to devote so much of the nation's resources to simply moving money around rather than making things. Why has this shift occurred and what, if anything, can the government do about it?*

RESPONSE:

At its core, banking is about managing risk and mediating between those who are ready and able to provide capital and those who wish to use capital. To the extent that the banking system is efficiently able to offer those who hold capital multiple ways to invest that capital, and multiple ways to manage the risks of doing so, the entire economy benefits. It is true that the GDP share of the financial services sector grew to historical highs during the late 2000s, and that share has now declined. BAC cannot speculate as to what market share is too high.

(k) *Over the last 20 years, the world of finance has been irrevocably transformed: individuals have moved their money from savings accounts into money market funds, and institutional investors now keep their cash in the repo market, where Treasury securities are borrowed and lent, rather than as deposits in commercial banks. As a result, before the crisis, half of the credit provided in the United States was being channeled outside the commercial banking system. What regulatory changes do we need to ensure that our current financial system is as stable as the traditional banking system that served us so well from 1936 to 1996?*

RESPONSE:

BAC believes the reforms to the financial regulatory system in the United States are in order. BAC would suggest that policymakers consider the following issues as they craft the new system:

- Regulations should be consistent across markets and economies as much as practicable. Regulations should be focused on activities and practices, not on institutions; a prohibited activity should be prohibited regardless of the type of institution — bank, hedge fund, monoline company, etc. —that is engaging in the practice. Regulatory arbitrage cannot

be allowed, as capital will flow where it can be leveraged the most, and the worst practices will occur where there is the least risk of detection.

- Subprime mortgage origination gravitated to unsupervised, state-licensed brokers and lenders.
- Independent investment banks maintained three to four times the leverage of bank holding companies.
- Mortgage risk became concentrated in GSEs which had capital requirements that were a fraction of that of commercial banks. This (along with federally subsidized debt issuance) made them the low-cost holder of mortgages and concentrated risk in them.

- Static measures of bank capital are limited in their utility. It has been known for some time that capital is a lagging indicator of problems, as it is depleted only after the losses occur. For sophisticated banks, ongoing stress testing is an equally important method of assessing capital adequacy.

- Capital is important, and in retrospect many investment banks were over-leveraged. While requirements of 16 to 1 for bank holding companies may have been closer to the ballpark, bank holding companies should and undoubtedly will hold more capital going forward, even as we work to deploy capital wisely to drive economic growth.

- Current accounting rules are pro-cyclical and extremely unwise. One example is loan loss reserves. Reserves function like capital in the sense that they protect debt holders and, ultimately, taxpayers from loss. Any rational policy would encourage banks to build reserves during good times and draw them down in bad times. Accounting rules, however, allow banks to build reserves only to cover losses expected over the short term, and prohibit banks from building more than immediately necessary. The concern is that reserves will be used as a general reserve to smooth earnings. Thus, banks are prohibited from building reserves in good times and required to build them in bad times, when the markets make it most difficult to do so. The easy compromise is for banks to hold extra reserves, but clearly and fully disclose what is extra and what is forecast to be necessary.

- Rules for regulating complex financial institutions must be clear and globally consistent. We ultimately will need cross-border agreement on which jurisdiction has first claim on which assets.

- While clear rules are important, there must be flexibility in any resolution regime, as rules on liquidity or resolution can never be written in a way that will cover every crisis. Regulators need sufficient flexibility so that they are prepared to address a Lehman-like situation with the power to do what they believe is in the best interest of the system, and ultimately the economy.

(s) Why aren't bankers and traders required to have more skin in the game - that is, more of their own salary at risk - and not just a marginal part of one year's bonus?

RESPONSE:

BAC believes in linking compensation with performance and in encouraging a long-term perspective. In general, an associate's compensation is tied to a) how well BAC performed against expectations; b) how well the associate's unit performed against expectations; and c) how well the associate performed against expectations. A significant portion of the incentive awards for the Bank's executive officers (and certain other senior leaders) are provided as long-term incentive awards that become earned and payable over a period of three years after grant and subject to cancellation in case of detrimental conduct or failure of the corporation, line of business, or product (as applicable) to remain profitable during the vesting period. If risks taken as part of approved business strategies do not result in sustainable profits, or if the associate fails to behave according to the Bank's standards, the value of the long-term incentive award made will be impacted.

The determination of how much of an associate's total variable compensation will be delivered as long-term compensation is determined by the associate's job or compensation level. The more senior the position, the more strategic influence a job generally has. Thus, the more senior and higher-paid positions have a higher percentage of their total variable compensation delivered as long-term compensation. For senior leaders and the highest paid associates, up to two-thirds of total variable compensation may be delivered as a long-term incentive.

As discussed below, BAC has also recently taken additional steps in this area.

(u) *What, if any, changes do you contemplate making to your pay programs for executives and other high-level employees in light of recent events and related public concerns?*

RESPONSE:

Beginning with performance year 2009, equity awards to executive officers (and certain other senior leaders) at BAC will be subject to up to two new "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 two new clawback requirements are as follows:

- The equity awards are subject to a "performance-based clawback" to encourage sustainable profitability over the vesting period. If during the vesting period BAC or the executive officer's line of business (if applicable) experiences a loss, the Compensation and Benefits Committee will assess the executive officer's accountability for the loss. This assessment will take into account factors such as the magnitude of the loss, the executive officer's decisions that may have led to the loss, the executive officer's overall performance, and other factors. Based on this assessment, the Compensation and Benefits Committee may determine to cancel all or part of the award.
- Equity awards are also subject to a "detrimental conduct clawback." If an executive officer engages in certain "detrimental conduct," the equity award will be canceled to the extent not yet vested. In addition, the equity awards to our executive officers authorize the company to reduce or recover from the awards any losses if it is determined that the executive officer has engaged in detrimental conduct.

BAC also maintains an Incentive Compensation Recoupment Policy that covers its executive officers. This Policy goes beyond the clawback requirements under Sarbanes-Oxley that are limited to our Chief Executive Officer and Chief Financial Officer. Under this Policy, if the Board or an appropriate Board committee has determined that any fraud or intentional misconduct by one or more executive officers caused BAC, directly or indirectly, to restate the Bank's financial statements, the Board or committee will take, in its sole discretion, such action

as it deems necessary to remedy the misconduct and prevent its recurrence. The Board or committee may require reimbursement of any bonus or incentive compensation awarded to such officers or cancel unvested restricted stock or outstanding stock option awards previously granted to such officers in the amount by which such compensation exceeded any lower payment that would have been made based on the restated financial results.

(v) What have you done to modify your risk management and oversight structures to reduce the possibility that the problems of 2008 and 2009 will occur again?

RESPONSE:

All banking activity involves the taking and managing of risk. BAC's goal is to make every good loan and transaction we can while maintaining a prudent level of risk.

BAC has devoted significant resources to strengthening its risk management and oversight structure. We have clarified risk management roles and responsibilities. For example, the Bank has separated the compliance and operational risk functions. BAC has also created new committees at the Board and management levels that are charged with managing risk. As part of this new risk management framework, BAC's senior management team now recommends, and the Board of Directors will approve, an annual risk profile that establishes guidelines regarding how much risk the Bank is willing to take as a company.

Finally, BAC is actively encouraging its associates to openly debate risk-related issues, and the Bank is escalating issues and taking action based on those debates. Every associate is responsible for operating within BAC's established risk profile, and the Bank must make sound judgments about the risk/reward trade-offs of business decisions.

5. Please state whether Bank of America has applied the claw-back provisions of its compensation program to any employee. Please include the reason for the claw-back, the dollar amount of the claw-back and the percentage of the individual's compensation the claw-back represented.

RESPONSE:

As described in detail above in response to Question 4(v), BAC granted the first compensation packages subject to clawback as part of the annual incentive compensation process in February 2010. BAC has not applied that provision to date.

8. Please provide the following information about your institution's business as an over-the-counter derivatives dealer during each of the last four years, 2006-2009:

a. Revenues relating to the business by quarter.

RESPONSE:

OTC Derivatives Dealer Related Activity		Revenues ($ in millions)
1Q06		$ 2,539
2Q06		270
3Q06		3,510
4Q06		2,034
	Total 2006	$ 8,354
1Q07		2,208
2Q07		2,571
3Q07		43
4Q07		(1,605)
	Total 2007	$ 3,216
1Q08		329

OTC Derivatives Dealer Related Activity		Revenues ($ in millions)
2Q08		193
3Q08		2,731
4Q08		(5,450)
Total 2008	$	(2,197)
1Q09		2,552
2Q09		1,906
3Q09		2,614
4Q09		1,026
Total 2009	$	8,098

Notes:

- Revenues include derivative and non-derivative cash instruments.
- Derivatives dealer activities are managed on a portfolio basis within BAC's Global Markets business segment.

b. Profits or losses relating to the business by quarter.

RESPONSE:

OTC Derivatives Dealer Related Activity		Profits or Loss ($ in millions)
1Q06	$	1,529
2Q06		(658)
3Q06		2,365
4Q06		895
Total 2006	$	4,131
1Q07		927
2Q07		1,265

OTC Derivatives Dealer Related Activity		**Profits or Loss** ($ in millions)	
3Q07			(1,122)
4Q07			(2,805)
	Total 2007	$	(1,735)
1Q08			(972)
2Q08			(963)
3Q08			1,635
4Q08			(6,285)
	Total 2008	$	(6,585)
1Q09			1,602
2Q09			973
3Q09			1,842
4Q09			(63)
	Total 2009	$	4,355

Notes:

- The Profits or Loss data includes derivative and non-derivative cash instruments.
- Derivatives dealer activities are managed on a portfolio basis within BAC's Global Markets business segment.

c. Percentage of the business that consisted of standardized contracts as opposed to customized contracts by quarter. Please describe how you are defining "standardized" and "customized".

RESPONSE:

Reporting Period: December 31, 2009[2]

Breakdown:

Standardized: 56%

Customized: 44%

How "standardized" and "customized" are defined:

Standardized: OTC derivative contracts which clear through a clearing house.

Customized: OTC derivative contracts which do not clear through a clearing house.

Notes:

- Data presented above is based on trades outstanding with dealer counterparties as of December 31, 2009.
- Standardized OTC derivatives are primarily interest rate products.

[2] Data for standardized versus customized derivative contracts is only available for 2009, not prior years.

d. Positions held in all OTC derivatives contracts in notional amount at the end of each of the last four years, and positions held in each of the following categories at that time: interest rate, currency, energy, credit, and other.

RESPONSE:

	OTC Notional			
(in millions USD)	**2006**	**2007**	**2008**	**2009**
Interest Rate Contracts	$39,031,466	$52,905,593	$54,143,005	$ 45,122,016
Foreign Exchange Contracts	5,013,988	5,659,918	4,356,244	3,138,189
Equity Contracts	276,063	442,793	397,901	341,415
Commodity and Other Contracts	203,847	291,994	289,719	222,446
Credit Derivatives	5,103,137	7,882,803	6,031,974	5,644,093
Total Notional	$49,628,501	$67,183,101	$65,218,843	$ 54,468,159

Notes:

- Consolidated BAC exposures.

10. If you had to identify one cause for the financial crisis, what would it be?

RESPONSE:

We believe the 2008 financial crisis was dynamic, and thus it would be impossible to identify any one cause. As BAC's Chief Executive Officer Brian Moynihan described in the written testimony he submitted to the Commission in January, the crisis was precipitated by a dramatic expansion in the availability of mortgage credit that was driven by the behavior of lenders, rating agencies, investors, insurers, regulators and policy makers. Underlying this expansion of credit was behavior – by consumers, by businesses small and large, by the government, by financial institutions, and others – that suggested excessive confidence in the proposition that home prices would always go up and never go down. When the nation experienced an unprecedented, national decline in home prices – the worst since the Great Depression – which was inevitably coupled with a follow-on recession, many of these loans became unfavorable, and the consequences were far-reaching.

13. To what extent did fair value or mark-to-market accounting have a role in Bank of America's problems or the financial crisis in general?

RESPONSE:

We recognize that fair value accounting has received attention as a potential contributing factor to the financial crisis. We would note, though, that the underlying purpose of accounting rules, including fair value accounting, is to provide timely, relevant, reliable results while ensuring transparency and accountability. In a perfect marketplace with readily available third party quotes, these objectives can be achieved. However, fair value accounting is very difficult when there is severely limited or no liquidity in secondary markets. Further, obtaining true market prices on certain instruments (such as loans) may be subjective and therefore may not be appropriate to flow through income statements.

During the financial crisis, a lack of market activity, expectations of continued downward pressures, extremely high risk premiums and uncertainty created a situation where the markets failed to produce reliable pricing inputs for use in valuation models. Fair value accounting attempted to capture the impact of this phenomenon, but it is not clear that it created the phenomenon.

14. Please describe the difference between the operations of a bank and the operations of a bank holding company.

RESPONSE:

Pursuant to the National Bank Act and applicable Office of the Comptroller of the Currency regulations, a bank (directly or through subsidiaries) may engage in activities that are the "business of banking." Thus, full service commercial banks may offer a wide array of banking and financial products to customers directly and through controlled subsidiaries, with services including but not limited to depository, lending, financial advisory, facilitating electronic bill payments, electronic commerce, and credit card processing.

By contrast, a bank holding company (directly or through subsidiaries) is only permitted to engage in activities that are "closely related to the business of banking." A bank holding company that qualifies as a financial holding company (directly or through subsidiaries) is permitted to engage in activities that are "financial in nature." These activities include most banking activities (other than accepting deposits), but also include certain other financial activities not permissible for banks, such as securities underwriting and insurance activities. Many bank holding companies limit their direct activities to being a holding company for subsidiaries, including subsidiary banks, although this is not required by law.

17. What were Bank of America's earnings from Credit Default Swaps (CDS) from 2006 to 2009?

RESPONSE:

CDS Related Activity	**Revenues** ($ in millions)
2006	$ 406
2007	125
2008	141
2009	2,125

Notes:
- Revenues include derivative and non-derivative cash instruments.
- Revenues relate to BAC's Credit Trading activities within its Global Markets business segment.

21. Why did Bank of America acquire Countrywide?

RESPONSE:

BAC's purchase of Countrywide Financial Corp. ("Countrywide") in January 2008 was important for advancing BAC's goal of helping customers and clients meet all of their financial needs. Countrywide's mortgage origination business and its large customer base allowed BAC to reach more customers and to offer additional services to its existing customers, allowing BAC to grow its business and position it for future growth.

By purchasing Countrywide, BAC benefitted from Countrywide's broader mortgage capabilities, including its extensive retail, wholesale and correspondent distribution networks. Countrywide operated more than 1,000 field offices and had a sales force of nearly 15,000. BAC also acquired Countrywide's leading mortgage technology platform, a well-known brand in home lending and management expertise in a number of key areas.

* * * *

BAC's response may contain confidential information, including highly sensitive and proprietary business information and supervisory information that would have important implications if disclosed to third parties. Federal securities law recognizes that the use or disclosure of non-public information regarding a publicly-traded company may result in harm to public investors. Selective disclosures or selective releases of information regarding the timing of any future public disclosures may also result in harm to investors and violate federal securities laws. Accordingly, at this time BAC respectfully requests that its response be maintained confidentially by the FCIC and its staff. Neither this letter nor BAC's providing information to the FCIC today is intended to, and does not, waive any applicable privilege or other legal basis under which information may not be subject to production. If it were found that any of the information provided by BAC constitutes disclosure of such information, BAC does not intend to waive and has not waived any privilege or other protection.

BAC also asks that the FCIC staff provide the undersigned with notice and an opportunity to be heard in the event the FCIC determines that it will disclose any information from this production and letter to a third party. Such treatment would be consistent with respect for sensitive and proprietary business information that Congress has shown in the past.

* * * *

Please call me (202-663-6430) or Michael Sharp (212-937-7502) if you have any questions.

Sincerely,

/s/ Reginald J. Brown

Reginald J. Brown

Michael J. Sharp

Confidential Treatment Requested

WILMERHALE

April 21, 2010

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<u>**VIA HAND DELIVERY**</u>

Thomas Greene, Esq.
Gary Cohen, Esq.
Christopher Seefer, Esq.
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006-4614

Re: <u>Supplemental Response to February 2, 2010 Request Letter</u>

Gentlemen:

Below please find Bank of America Corporation's ("BAC" or the "Bank") supplemental response to your request for information dated February 2, 2010. As we have discussed, BAC's response to this request was reprioritized in light of more time sensitive requests from the Financial Crisis Inquiry Commission ("FCIC") and will proceed on a rolling basis. We continue to work to collect and produce additional information responsive to your request and will supplement this response as soon as practicable.

(1) Did Bank of America prepare any kind of internal investigation, audit, or similar review regarding its business practices, including mistakes made, that contributed to the financial problems experienced by the bank in 2008? If so, please provide the internal review. If no review was performed, please explain why.

<u>RESPONSE</u>:

In addition to its typical audit and review practices, BAC has conducted reviews and undertaken certain initiatives in response to developments associated with the financial crisis. BAC initiated a counterparty monitoring program and conducted due diligence in connection with its acquisitions of Countrywide and Merrill Lynch. BAC benchmarked its risk management practices against recommendations made in 2008 by industry groups and regulatory agencies, and reassessed the practices of the Risk Management Group. Corporate Audit and the Audit Committee have enhanced practices and reporting, and BAC's Board of Directors has been involved in approving risk management practices and risk assessment across the organization. We would be happy to discuss specific reviews and initiatives further via a supplemental briefing with the Commission staff, if desired, at a mutually agreeable time.

(3)(i) Your industry has vigorously opposed creating a consumer protection agency. But it's clear that your millions of retail customers weren't adequately protected, leading to hardship and heartbreak across the nation. Because you oppose creating

such a regulator, what should be done to ensure these problems don't happen again?

RESPONSE:

BAC is not opposed to the creation of the Consumer Financial Protection Agency. Please see the American Banker article entitled "B of A to Support Consumer Agency," dated April 8, 2010, attached as Appendix A. That said, it should be noted that the supervision of federally insured banks and bank holding companies generally proved successful in preventing abusive subprime lending; the largest subprime lenders grew up in state-licensed lenders outside the regulated banking industry. BAC made a decision to exit subprime mortgage lending in 2001.

(7) **Please describe how Bank of America's board of directors, committees of the board of directors, internal auditors, outside auditors, and regulators review, test, and audit the company's risk management practices, including the value of the bank's assets and its leverage. At any point during or after 2007, did any of those entities, or any other entities, express any concern or raise any issues about the value of the bank's assets or its leverage. If yes, what were the concerns or issues, when were they raised, and how did the bank respond?**

RESPONSE:

Corporate Audit performs risk management assessments as part of its fixed periodic reviews, as well as part of targeted reviews throughout the year. Corporate Audit's findings are presented to the Audit Committee of the Board. If reportable issues requiring remediation exist, management is required to develop an action plan to mitigate the identified risk through its issues management process. Corporate Audit determines that management timely mitigates the identified issue and presents the status of all risk mitigation and open issues to the Audit Committee, which holds management accountable for timely closure of issues.

BAC's independent outside auditor, PricewaterhouseCoopers ("PwC"), conducts audits in accordance with the standards of the Public Company Accounting Oversight Board. Accordingly, PwC performs audits to obtain reasonable assurance regarding whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. PwC determined that the Company's Consolidated Balance Sheet and the related Consolidated Statement of Income, Consolidated Statement of Changes in Shareholders' Equity and Consolidated Statement of Cash Flows presented fairly, in all material respects, the financial position of BAC and its subsidiaries as of December 31, 2007, and December 31, 2008, and the results of their operations and their cash flows for each of the three years in the period ending December 31, 2008, in conformity with

accounting principles generally accepted in the United States. As a result of its work, PwC issued an unqualified audit opinion.

BAC's regulators have an extensive review program that includes frequent interaction with senior management. Those reviews are, by law and regulation, conducted confidentially by each regulatory agency and unauthorized disclosure of the contents of the reviews is generally prohibited. For additional detail regarding regulatory audits or reviews, we respectfully request that the FCIC contact BAC's regulators.

(9) Please provide the following information about your institution's proprietary trading during each of the last four years, 2006-2009:

- **(a) Describe the nature and kinds of proprietary trading your institution engaged in.**
- **(b) The amount of proprietary trading that was speculative and the amount of such trading that was hedging your business risk.**

RESPONSE:

There are various definitions of what constitutes proprietary trading. BAC does not track its trading activity in a way that reflects whether revenue, profits, and losses are explicitly derived from BAC executing orders for clients or placing orders alongside clients.

Set forth below is information relating to the Global Markets business segment of BAC:

- Global Proprietary Trading ("GPT") trades across a number of asset classes: credit, rates, equities, foreign exchange ("FX"), asset backed securities, and commodities. GPT is active in each market in New York and London while trading only equities and FX in Asia. GPT's focus is to find trading opportunities in liquid markets, although it does have some legacy positions that have less liquidity. The strategies are primarily relative value rather than purely directional and the time horizon is short to intermediate term. GPT utilizes both fundamental and quantitative analysis to guide its strategies. GPT obtains liquidity from a broad array of dealers in the market. Trader mandates are strictly adhered to, and market, credit, and operational risks are actively managed.

- Quantitative Statistical Arbitrage involves algorithmic trading across a number of technology strategies. Traded products are primarily in listed equities and equity futures.

- Rate Proprietary Trading - Cross Asset Relative Value Trading utilizes approved products in futures, bonds, and OTC derivatives. To date, most activity has been in interest rate and FX products with more limited trading in credit, equity, and commodity markets.

(c) Revenues relating to the proprietary trading.
(d) Profits or losses relating to the proprietary trading.
(e) Assets held relating to proprietary trading at the end of each of the last four years.

RESPONSE:

Please see explanation in response to 9(a) and 9(b) and chart below:

Year	9(c) Revenues ($ in millions)	9(d) Profit & Loss ($ in millions)	9(e) Assets ($ in millions)
2006	$ 773	$ 463	$ 23,275
2007	1,778	1,351	22,166
2008	(326)	(756)	12,917
2009	2,134	1,741	10,220

(18) Did Bank of America purchase any CDS protection from AIG, and on what risks?

RESPONSE:

Bank of America / Merrill Lynch ("BACML") primarily purchased credit default swaps ("CDS") protection from AIG on Super Senior CDOs. Approximately $7 billion of this purchased protection was terminated in the fourth quarter of 2008.

BACML currently has approximately $1.9 billion of CDS protection from AIG as detailed below:

Current outstanding	Notional ($ in millions)
Super Senior CDOs	$ 624
Corporate Bespoke CDO	1,000
Single-name CDS	284
	$ 1,908

CDS are generally purchased as a hedge against an adverse credit event with the reference entities (the company for which credit protection is bought).

(19) It is said that CDS obligations are not visible on the balance sheets or financial statements of participants in the CDS market. If these obligations are visible to investors and creditors in your financial statements, please identify where they appear and how they are calculated.

RESPONSE:

CDS obligations are visible to investors and creditors in BAC's financial statements. Credit derivative instruments in which the Bank is the seller of credit protection are described in BAC's Form 10-Q filing for the quarter ended September 30, 2009 ("Form 10-Q"), and in BAC's Form 10-K for 2009 ("Form 10-K") as part of "Note 4 – Derivatives to the Consolidated Financial Statements" ("Note 4"). Specifically, Note 4 sets forth the gross notional and carrying values of CDS and other credit derivatives purchased and written across the entire company.

In addition, the notional and carrying value of CDS and other credit derivatives in which BAC is the seller of protection is further disclosed by maturity type and segregated by the credit quality of the underlying reference obligation, which is classified as investment grade and non-investment grade. Credit protection purchased and written is discussed in the Form 10-Q and Form 10-K as part of the Commercial Portfolio Credit Risk Management section of Management's Discussion and Analysis. For example, Table 39 in Form 10-Q and Table 37 in Form 10-K present the notional amount and credit risk of CDS and other credit derivatives outstanding for both purchased and written credit derivatives.

The notional amounts represent the total contract amount of CDS and other credit derivatives outstanding, including purchased and written protection. The notional amounts also represent the maximum amount payable if a specified credit event occurs; however, the notional amount does not take into consideration the probability of occurrence. The carrying value equates to the fair market value of CDS and other credit derivatives and is generally calculated based on changes in observable credit spreads of the underlying reference obligation. The credit risk amounts are measured as the net replacement cost in the event the counterparties with contracts in a gain position to BAC fail to perform under the terms of those contracts.

(20) Did Bank of America purchase or provide CDS protection on Lehman, and if so what were Bank of America's gains or losses, if any? What other gains or losses to Bank of America resulted from Lehman's bankruptcy, and what is the amount of such gains or losses?

RESPONSE:

Prior to Lehman's bankruptcy, BAC and Merrill Lynch were net buyers of approximately $77 million notional value of single name Lehman CDS protection (this excludes the Counterparty Credit Valuation Adjustment ("CVA") portfolios, which are used to hedge counterparty exposure including internal credit spreads). Gains for 2008 totaled approximately $66 million.

There was also a hedge position in the Merrill Lynch CVA portfolios, which were a net seller of $1 billion notional of protection. For 2008, losses related to this position were $913 million.

BAC and Merrill Lynch reported claims relating to the Lehman bankruptcy in the amounts of $2.9 billion and $2.5 billion respectively. However, Lehman bankruptcy proceedings are continuing and these claims have not yet been resolved. Accordingly, BAC is unable to determine the exact amount of gains or losses resulting from the Lehman bankruptcy and the attendant market dislocation.

* * * *

BAC's response may contain confidential information, including highly sensitive and proprietary business information and supervisory information that would have important implications if disclosed to third parties. Federal securities law recognizes that the use or disclosure of non-public information regarding a publicly-traded company may result in harm to public investors. Selective disclosures or selective releases of information regarding the timing of any future public disclosures may also result in harm to investors and violate federal securities laws. Accordingly, at this time BAC respectfully requests that its response be maintained confidentially by the FCIC and its staff. Neither this letter nor BAC's providing information to the FCIC today is intended to, and does not, waive any applicable privilege or other legal basis under which information may not be subject to production. If it were found that any of the information provided by BAC constitutes disclosure of such information, BAC does not intend to waive and has not waived any privilege or other protection.

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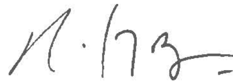
* * * *

Please call me (202-663-6430) or Michael Sharp (212-937-7502) if you have any questions.

Sincerely,



Reginald J. Brown
Michael J. Sharp

Enclosure

Appendix A

B of A to Support Consumer Agency

Position shift could impact reg reform bill

American Banker | Thursday, April 8, 2010

By Stacy Kaper

WASHINGTON — Bank of America Corp. is breaking ranks with other large banks and agreeing to support beefed up consumer-protection provisions in regulatory reform legislation, several sources said Wednesday.

The provision has been one of the most controversial elements in the reform effort, and the support of a large financial institution could help build momentum for the idea.

Until now, B of A has officially stayed neutral on a consumer protection unit but it has been fiercely opposed by the banking industry, which argues it could write rules that conflict with safety and soundness standards.

But at a meeting with several community groups on Wednesday, top B of A executives said they were ready to give a consumer protection agency their support under certain conditions.

They said the new agency should focus on regulating by product, not company type, and cover nonbanks and banks alike. Executives also emphasized that states should not be empowered to impose federal or state standards against national banks.

"We support the idea of a consumer protection entity, consistent with the principles of federal preemption, and believe that any new regulations should focus on activities that would apply evenly to all, rather than be focused on particular entities," a B of A spokesman said late Wednesday.

But the spokesman emphasized the company was not supporting a particular bill.

"We have not taken a position on any specific proposal or piece of legislation as there are many ways this might be achieved," he said.

Some community groups welcomed the bank's change of position.

"We are pleased to see Bank of America take this leadership position," said Janis Bowdler, a senior housing policy analyst with the National Council of La Raza. "We call on the bank's peers to follow in their footsteps and put the long-term stability of families and companies before short-term profits."

The move by B of A could provide momentum to Senate Banking Committee Chairman Chris Dodd's efforts to push his regulatory reform bill through the Senate this month.

But some consumer groups remained skeptical, noting the details for the planned Consumer Financial Protection Agency are still being hashed out by Dodd and the panel's ranking Republican, Sen. Richard Shelby of Alabama.

"The question is will they support the current Dodd CFPA or the rumored Shelby CFPA?" said Ed Mierzwinski, the consumer program director for the U.S. Public Interest Research Group.

Shelby has reportedly floated a proposal to Dodd to create a separate consumer agency that would be beholden to banking regulators' approval before issuing new consumer regulations.

The proposal is seen as a way to offer support for a separate agency without enabling it to override safety and soundness considerations of prudential regulators.

The current Dodd bill would create an independent consumer division within the Federal Reserve Board, but which would not be subject to the central bank's oversight. The division could only be overridden by a two-thirds vote of a proposed systemic risk council.

Some consumer groups saw B of A embracing consumer protection as trying to push Shelby's plan.

"My bet is if they do support it will be for the weaker Shelby CFPA with the bigger veto, and probably more preemption," said Mierzwinski. "One industry strategy is becoming clearer — they hope support for a sort-of CFPA will make it easier for them to demand concessions on derivatives and shadow banking and systemic risk regulation."

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WILMERHALE

May 13, 2010

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VIA HAND DELIVERY

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Re: Supplemental Response to February 2, 2010 Request Letter

Gentlemen:

Below please find Bank of America Corporation's ("BAC" or the "Bank") supplemental response to your request for information dated February 2, 2010. As we have discussed, BAC's response to this request was reprioritized in light of more time sensitive requests from the Financial Crisis Inquiry Commission ("FCIC") and is proceeding on a rolling basis. We continue to work to collect and produce additional information responsive to your request and will supplement this response as soon as practicable.

(2) Please explain Bank of America's due diligence practices regarding mortgages originated, acquired or sold, including any changes to those practices, following the September 2004 warning from the FBI about mortgage fraud.

RESPONSE:

BAC has robust fraud detection policies and practices with respect to its mortgage finance activities. The Mortgage Fraud Prevention and Mortgage Fraud Investigation groups address various fraud-related issues, including underwriting, valuation, and documentation. Specific due diligence practices include, but are not limited to, the following programs:

- Pre-Funding Red Flag Review: For every origination, fraud review underwriters conduct a Pre-Funding Red Flag Review to spot risks before capital is committed. The reviewers use tools such as occupancy reports (which flag borrowers who apply for multiple loans using contradictory information) and scorecards for loan officers based on fraud risk findings on their previously funded loans, as well as overall performance of those loans.

- Fraud Hotline: The Fraud Hotline is a communications system through which lenders, internal associates, and borrowers can report instances of fraud directly to the Prevention and Investigation groups. Any manner of fraud may be reported, including suspected conduct occurring before the loan is funded.

- Fraud Detector: The Fraud Detector is an automated fraud detection system intended to uncover borrowers who provide faulty information to lenders. The system is fully integrated with BAC's computerized loan origination program so that potential red flags are promptly brought to the attention of the Prevention and Investigation groups.

- Watch List Manager: The Watch List Manager is a database listing entities that BAC chooses not to conduct business with as a result of prior loan transactions containing misrepresentations, errors, or omissions. Every loan origination requires a search for listed entities, and a match results in additional scrutiny of the loan file.

- Appraisal Review System: Because appraisal is often performed by a third party, this system reviews each appraisal independently and rates the risk of fraud associated with it. The Appraisal Review System then makes recommendations such as seeking an outside second opinion for selected appraisals.

(3)(a) All of your firms are involved in some form of proprietary trading, or using your own capital to make financial bets, not unlike hedge funds and other private investors. As the recent crisis has shown, these bets can go catastrophically wrong and endanger the global financial system. Given that the government sent a clear signal in the crisis that it would not let the biggest firms fail, why should taxpayers guarantee this sort of trading?

(3)(b) Why should the government backstop what amounts to giant hedge funds inside the walls of your firms?

(3)(c) How is such trading helpful to the broader financial system?

RESPONSE:

Proprietary trading (a term with a number of potential meanings) can be an important tool for market making and creating liquidity in the financial system. Unlike a hedge fund, any proprietary trading activities at bank holding companies are routinely monitored by federal regulators including the OCC and the Federal Reserve.

(4)(l) Describe in detail the three worst investments your bank made in 2007 and 2008 — that is, those transactions on which you lost the most money. How much did the bank lose in each case?

(4)(m) What was the total compensation of each manager or executive supervising those three transactions - including yourself - in 2007 and 2008?

(4)(n) Are those executives still with your bank? What investments do they supervise today? How much will they be paid for 2009, including their bonuses?

RESPONSE:

Like all investors, BAC seeks to maximize profit from investments and strives to limit losses when they occur. Unfortunately, not every investment or trade is profitable and like the vast majority of the country's large financial institutions, there are certain things that BAC could have done differently in the months leading up to and during the financial crisis.

Similar to other financial institutions, BAC, including Merrill Lynch, had losses related to investments in collateralized debt obligations ("CDO"), and the company wrote down a total of $44.3 billion in asset values and other investments and obligations related to CDOs in 2007 and 2008. Also similar to other financial institutions, BAC, including Countrywide, had $5.3 billion in losses from products related to consumer home loan products.

In each instance, BAC has worked to limit losses on investments and to learn from its experience in order to emerge from the crisis a smarter and stronger company and to maximize value for its investors. By managing its diverse portfolio and despite difficult market conditions, during the first quarter of 2009 BAC reported earning $4.2 billion. In December 2009, BAC repaid $45 billion in TARP funds to the federal government. On April 16, 2010, BAC reported net income of $3.2 billion for the first quarter of 2010, primarily driven by improved credit quality among its portfolios and strong capital markets investment activity.

With respect to persons involved in the investments that led to the losses, there is no one manager who was responsible for these positions. Rather, because of the governance standards under which BAC operates, such positions were the result of a collaboration among various departments including the business, credit, and others. The CDO structuring business has been discontinued and most of the employees involved with that business are no longer working for BAC.

(4)(o) Some . . . firms received payouts on credit-default swap contracts with American International Group. . . How much profit did your firm record for bonus purposes

on these trades that ultimately delivered huge losses? How much of these bogus profits were paid out in bonuses?

RESPONSE:

BAC does not record profits or losses from specific trades for bonus purposes. The Management Compensation Committee ("MCC"), which is comprised of BAC's Chief Executive Officer and members of his management team, approve overall incentive pools for employees below the executive officer level. To determine the size of bonus pools, the MCC considers recommendations of each business line's leadership team and the overall financial performance of the Bank and each business line, and not any specific trade or transaction. In its analysis, the MCC reviews operating earnings and earnings per share, and takes into account the quality and sustainability of earnings. Financial performance is measured over a multi-year period against internal goals and on a relative basis against the Bank's key competitors.

(4)(p) Have you made any effort to recover the bonuses? If not, why not?

RESPONSE:

As described in our letter dated March 30, 2010, BAC initiated equity awards subject to clawback as part of the annual incentive compensation process in February 2010. BAC has not applied the clawback provision to date.

(4)(q) Why did Wall Street continue to package and sell as securities so many mortgages of questionable value and underwriting standards even as the housing market started to collapse?

RESPONSE:

Prior to the housing market collapse, investment banks, hedge funds, and asset management firms made the same basic assumptions as loan originators, servicers, rating agencies and many consumers: they believed, based on the data then available, that home prices would continue to appreciate, and therefore they believed that these structures were sound and that the risks of subprime lending were manageable in what was perceived to be a strong economic environment. At the onset of the housing downturn, these assumptions and forecasts based on available data had become sufficiently ingrained that most market participants significantly underestimated the ultimate severity of the downturn. It is only with the benefit of hindsight that we now know that many market participants, including many sophisticated institutions, failed to appreciate the magnitude of the risks inherent in subprime mortgages.

(4)(r) Why were Wall Street traders and other moneymen permitted to make bets - through the use of so-called credit-default swaps - on the long-term value of securities they didn't even own? . . .

RESPONSE:

Credit default swaps and other derivatives can be effective tools for allowing investors to manage risk and also assist in establishing price transparency. The Global Markets Group at BAC is a leader in the global distribution of fixed income, currency and energy commodity products and derivatives. The Bank works with commercial and corporate clients to provide debt and equity underwriting and distribution and risk management products. BAC executes the majority of its derivative contracts in the over-the-counter market with large, international financial institutions, including broker/dealers and, to a lesser degree, with a variety of non-financial companies. The Bank enters into credit derivatives primarily to facilitate client transactions and to manage credit risk exposures.

(4)(t) How did you use the bailout money, and to what extent did it result in more lending or higher bonuses for your employees than you otherwise would have provided?

RESPONSE:

BAC filed Monthly Intermediation Snapshots with the U.S. Department of Treasury through December 2009, at which time it repaid the TARP funds it received. The Snapshots included, among other things, information on BAC's lending activities. The Snapshots are available at:
http://www.financialstability.gov/impact/monthlyLendingandIntermediationSnapshot.htm.

(11) In your answers to questions at the hearing, you said that Bank of America was not too big to fail, and that you agreed that there should be some method for resolving a failing financial firm like Bank of America outside bankruptcy. How are these statements consistent? If the Bank of America is not too big to fail, why can't it simply be resolved in a bankruptcy proceeding?

RESPONSE:

BAC agrees with the longstanding principle consistently espoused by banking regulators that no institution is, explicitly or implicitly, "too big to fail." "Too big to fail" refers to the implicit guarantee that purportedly exists for the benefit of certain large financial institutions. This concept is based on the belief that, due to their size and to the significant number of affected

counterparties, such institutions or their creditors would be "rescued" by regulators and Congress, rather than allowed to fail, should they become insolvent. BAC understands that its insolvency would be highly disruptive to financial markets, but that does not mean that the Bank's insolvency would have such a devastating effect on markets that it would not be allowed to fail. The Lehman Brothers insolvency clearly illustrates that a large and globally diffuse financial institution can be allowed to fail.

That does not mean, however, that the process for resolving insolvencies of such financial holding companies could not be improved. The best arguments for a resolution process for financial holding companies that is distinct from the bankruptcy code relate not to the size and scope of such companies (i.e., whether they are believed to be "too big to fail") but rather to the unique nature of the contractual relationships of such companies, particularly the importance of timely resolution for their counterparties given the disruptive effects that uncertainty and delay can have on financial markets. Furthermore, financial holding companies are uniquely regulated, and vesting resolution authority with regulatory bodies that are familiar with such companies and their businesses could provide a distinct advantage in achieving proper and efficient resolution. A distinct resolution process for financial holding companies will not eliminate market disruption, but an appropriately designed resolution regime could help to minimize disruption, for an insolvent company of any size.

(12) There has been a great deal of criticism of the originate-to-distribute form of securitized financing for mortgages. In your view, does this system reduce mortgage rates and, if so, by how much?

RESPONSE:

In our view, mortgage rates are reduced as a result of lenders' securitizing loans, given the costs associated with retaining all loans on their balance sheets. We have not attempted to quantify the potential effect on mortgage rates, given the enormous effort and considerable resources required to perform such an analysis.

(15) Did Bank of America acquire subprime mortgages, create pools of these mortgages and sell securities backed by the these pools? If so, please provide data on the value of the securities sold, whether Bank of America retained any interest in these pools, and the nature of these interests and their respective dollar amounts.

RESPONSE:

In 2006 and 2007, BAC, legacy Countrywide, and legacy Merrill Lynch each created pools of subprime mortgages, and sold securities collateralized by those pools. Each entity typically retained an interest in the residual tranche of those pools. The value of the entities' retained interest has substantially decreased since the issuance of those securities.

The par value at issuance of the securities sold by Bank of America was approximately $6 billion. The value of BAC's retained interest in these securities was approximately $12 million as of February 25, 2010.

The par value at issuance of the securities sold by Countrywide was approximately $118 billion. The value of BAC's retained interest in these securities was approximately $2 billion as of February 19, 2010.

The par value at issuance of the securities sold by Merrill Lynch was approximately $57 billion. The value of BAC's retained interest in these securities was approximately $499 million as of February 25, 2010.

(22) What are the delinquency and default rates on Countrywide's subprime and Alt-A loans from the date of the acquisition to December 31, 2009?

RESPONSE:

As of July 1, 2008, BAC (including Countrywide) originated no new Alt-A or subprime loans. For the legacy Countrywide Alt-A loan portfolio, as of December 31, 2009, approximately 37% were delinquent by thirty days or more and approximately 10% were in default. For the legacy Countrywide subprime first lien loan portfolio, as of December 31, 2009, approximately 52% of loans were delinquent by thirty days or more and approximately 7% were in default.

* * * *

BAC's response may contain confidential information, including highly sensitive and proprietary business information and supervisory information that would have important

implications if disclosed to third parties. Federal securities law recognizes that the use or disclosure of non-public information regarding a publicly-traded company may result in harm to public investors. Selective disclosures or selective releases of information regarding the timing of any future public disclosures may also result in harm to investors and violate federal securities laws. Accordingly, at this time BAC respectfully requests that its response be maintained confidentially by the FCIC and its staff. Neither this letter nor BAC's providing information to the FCIC today is intended to, and does not, waive any applicable privilege or other legal basis under which information may not be subject to production. If it were found that any of the information provided by BAC constitutes disclosure of such information, BAC does not intend to waive and has not waived any privilege or other protection.

BAC also asks that the FCIC staff provide the undersigned with notice and an opportunity to be heard in the event the FCIC determines that it will disclose any information from this production and letter to a third party. Such treatment would be consistent with respect for sensitive and proprietary business information that Congress has shown in the past.

* * * *

Please call me (202-663-6430) or Michael Sharp (212-937-7502) if you have any questions.

Sincerely,

/s/ Reginald J. Brown

Reginald J. Brown
Michael J. Sharp

Confidential Treatment Requested

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May 13, 2010

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VIA HAND DELIVERY

Gary Cohen, Esq.
Christopher Seefer, Esq.
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006-4614

Re: Supplemental Response to February 2, 2010 Request Letter

Gentlemen:

Below please find Bank of America Corporation's ("BAC" or the "Bank") supplemental response to your request for information dated February 2, 2010. As we have discussed, BAC's response to this request was reprioritized in light of more time sensitive requests from the Financial Crisis Inquiry Commission ("FCIC") and is proceeding on a rolling basis. We continue to work to collect and produce additional information responsive to your request and will supplement this response as soon as practicable.

(2) Please explain Bank of America's due diligence practices regarding mortgages originated, acquired or sold, including any changes to those practices, following the September 2004 warning from the FBI about mortgage fraud.

RESPONSE:

BAC has robust fraud detection policies and practices with respect to its mortgage finance activities. The Mortgage Fraud Prevention and Mortgage Fraud Investigation groups address various fraud-related issues, including underwriting, valuation, and documentation. Specific due diligence practices include, but are not limited to, the following programs:

- Pre-Funding Red Flag Review: For every origination, fraud review underwriters conduct a Pre-Funding Red Flag Review to spot risks before capital is committed. The reviewers use tools such as occupancy reports (which flag borrowers who apply for multiple loans using contradictory information) and scorecards for loan officers based on fraud risk findings on their previously funded loans, as well as overall performance of those loans.

- Fraud Hotline: The Fraud Hotline is a communications system through which lenders, internal associates, and borrowers can report instances of fraud directly to the Prevention and Investigation groups. Any manner of fraud may be reported, including suspected conduct occurring before the loan is funded.

- Fraud Detector: The Fraud Detector is an automated fraud detection system intended to uncover borrowers who provide faulty information to lenders. The system is fully integrated with BAC's computerized loan origination program so that potential red flags are promptly brought to the attention of the Prevention and Investigation groups.

- Watch List Manager: The Watch List Manager is a database listing entities that BAC chooses not to conduct business with as a result of prior loan transactions containing misrepresentations, errors, or omissions. Every loan origination requires a search for listed entities, and a match results in additional scrutiny of the loan file.

- Appraisal Review System: Because appraisal is often performed by a third party, this system reviews each appraisal independently and rates the risk of fraud associated with it. The Appraisal Review System then makes recommendations such as seeking an outside second opinion for selected appraisals.

(3)(a) All of your firms are involved in some form of proprietary trading, or using your own capital to make financial bets, not unlike hedge funds and other private investors. As the recent crisis has shown, these bets can go catastrophically wrong and endanger the global financial system. Given that the government sent a clear signal in the crisis that it would not let the biggest firms fail, why should taxpayers guarantee this sort of trading?

(3)(b) Why should the government backstop what amounts to giant hedge funds inside the walls of your firms?

(3)(c) How is such trading helpful to the broader financial system?

RESPONSE:

Proprietary trading (a term with a number of potential meanings) can be an important tool for market making and creating liquidity in the financial system. Unlike a hedge fund, any proprietary trading activities at bank holding companies are routinely monitored by federal regulators including the OCC and the Federal Reserve.

(4)(l) Describe in detail the three worst investments your bank made in 2007 and 2008 — that is, those transactions on which you lost the most money. How much did the bank lose in each case?

(4)(m) What was the total compensation of each manager or executive supervising those three transactions - including yourself - in 2007 and 2008?

(4)(n) Are those executives still with your bank? What investments do they supervise today? How much will they be paid for 2009, including their bonuses?

RESPONSE:

Like all investors, BAC seeks to maximize profit from investments and strives to limit losses when they occur. Unfortunately, not every investment or trade is profitable and like the vast majority of the country's large financial institutions, there are certain things that BAC could have done differently in the months leading up to and during the financial crisis.

Similar to other financial institutions, BAC, including Merrill Lynch, had losses related to investments in collateralized debt obligations ("CDO"), and the company wrote down a total of $44.3 billion in asset values and other investments and obligations related to CDOs in 2007 and 2008. Also similar to other financial institutions, BAC, including Countrywide, had $5.3 billion in losses from products related to consumer home loan products.

In each instance, BAC has worked to limit losses on investments and to learn from its experience in order to emerge from the crisis a smarter and stronger company and to maximize value for its investors. By managing its diverse portfolio and despite difficult market conditions, during the first quarter of 2009 BAC reported earning $4.2 billion. In December 2009, BAC repaid $45 billion in TARP funds to the federal government. On April 16, 2010, BAC reported net income of $3.2 billion for the first quarter of 2010, primarily driven by improved credit quality among its portfolios and strong capital markets investment activity.

With respect to persons involved in the investments that led to the losses, there is no one manager who was responsible for these positions. Rather, because of the governance standards under which BAC operates, such positions were the result of a collaboration among various departments including the business, credit, and others. The CDO structuring business has been discontinued and most of the employees involved with that business are no longer working for BAC.

(4)(o) Some . . . firms received payouts on credit-default swap contracts with American International Group. . . How much profit did your firm record for bonus purposes

on these trades that ultimately delivered huge losses? How much of these bogus profits were paid out in bonuses?

RESPONSE:

BAC does not record profits or losses from specific trades for bonus purposes. The Management Compensation Committee ("MCC"), which is comprised of BAC's Chief Executive Officer and members of his management team, approve overall incentive pools for employees below the executive officer level. To determine the size of bonus pools, the MCC considers recommendations of each business line's leadership team and the overall financial performance of the Bank and each business line, and not any specific trade or transaction. In its analysis, the MCC reviews operating earnings and earnings per share, and takes into account the quality and sustainability of earnings. Financial performance is measured over a multi-year period against internal goals and on a relative basis against the Bank's key competitors.

(4)(p) Have you made any effort to recover the bonuses? If not, why not?

RESPONSE:

As described in our letter dated March 30, 2010, BAC initiated equity awards subject to clawback as part of the annual incentive compensation process in February 2010. BAC has not applied the clawback provision to date.

(4)(q) Why did Wall Street continue to package and sell as securities so many mortgages of questionable value and underwriting standards even as the housing market started to collapse?

RESPONSE:

Prior to the housing market collapse, investment banks, hedge funds, and asset management firms made the same basic assumptions as loan originators, servicers, rating agencies and many consumers: they believed, based on the data then available, that home prices would continue to appreciate, and therefore they believed that these structures were sound and that the risks of subprime lending were manageable in what was perceived to be a strong economic environment. At the onset of the housing downturn, these assumptions and forecasts based on available data had become sufficiently ingrained that most market participants significantly underestimated the ultimate severity of the downturn. It is only with the benefit of hindsight that we now know that many market participants, including many sophisticated institutions, failed to appreciate the magnitude of the risks inherent in subprime mortgages.

(4)(r) Why were Wall Street traders and other moneymen permitted to make bets - through the use of so-called credit-default swaps - on the long-term value of securities they didn't even own? . . .

RESPONSE:

Credit default swaps and other derivatives can be effective tools for allowing investors to manage risk and also assist in establishing price transparency. The Global Markets Group at BAC is a leader in the global distribution of fixed income, currency and energy commodity products and derivatives. The Bank works with commercial and corporate clients to provide debt and equity underwriting and distribution and risk management products. BAC executes the majority of its derivative contracts in the over-the-counter market with large, international financial institutions, including broker/dealers and, to a lesser degree, with a variety of non-financial companies. The Bank enters into credit derivatives primarily to facilitate client transactions and to manage credit risk exposures.

(4)(t) How did you use the bailout money, and to what extent did it result in more lending or higher bonuses for your employees than you otherwise would have provided?

RESPONSE:

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* * * *

Please call me (202-663-6430) or Michael Sharp (212-937-7502) if you have any questions.

Sincerely,

/s/ Reginald J. Brown

Reginald J. Brown
Michael J. Sharp

Confidential Treatment Requested

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May 19, 2010

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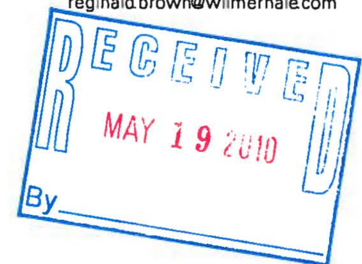

VIA HAND DELIVERY

Gary Cohen, Esq.
Christopher Seefer, Esq.
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006-4614

Re: Supplemental Response to February 2, 2010 Request Letter

Gentlemen:

Below please find Bank of America Corporation's ("BAC" or the "Bank") supplemental response to your request for information dated February 2, 2010. As we have discussed, BAC's response to this request was reprioritized in light of more time sensitive requests from the Financial Crisis Inquiry Commission ("FCIC"). This letter completes BAC's response to this request.

(16) According to the annual report of the Community Reinvestment Coalition for 2007, Bank of America or its predecessor institutions made commitments for CRA loans of more than $1.2 trillion between 1997 and 2007. The NCRC says these commitments were made in connection with merger approvals.

a. Can you confirm this?

RESPONSE:

BAC has a long tradition of setting public community development lending and investment goals, and the results of those efforts are provided through annual public reporting. In 2008, BAC announced a 10-year nationwide $1.5 trillion community development lending and investing goal. BAC's community development lending and investment goals, however, are not CRA-specific commitments. They are broader goals designed to demonstrate the impact that BAC has in serving traditionally underserved communities, primarily low- and moderate-income and minority populations, through community development lending and investing. Central to the Bank's commitment to and results in community development is the core tenet that as the company grows, BAC's community development activities will grow as well.

b. How many of these commitments resulted in CRA qualifying loans?

RESPONSE:

Generally, between 50% and 60% of lending and investing performance counted under our community development goal is also CRA-qualified.

c. What are the delinquency and default rates on these loans?

RESPONSE:

We can only provide an estimate for the delinquency and default rates on the CRA qualifying loans. First, BAC has a decentralized delivery model for its community development lending and investment. As such, these loans are not managed collectively as a "CRA" or "community development" portfolio. Second, the bulk of mortgage originations is sold on the secondary market (or to Fannie Mae or Freddie Mac). Therefore, we are unable to provide exact delinquency and default rates for CRA-qualified loans. However, we can provide the following related information:

As the economy began declining in 2007 and the housing crisis worsened, BAC experienced deterioration in credit quality (most notably in specialized flexible mortgage products and small business credit). Similar to industry trends, lending programs which included the most flexible underwriting criteria experienced a higher loss rate. In the fourth quarter of 2008, the loans originated in these programs were held on balance sheet and represented 8% of BAC's portfolio and 28% of the balance sheet portfolio losses.

Small business loans also experienced increased losses during this economic cycle with an annualized net credit loss rate of 17% by March 2009. In general, the affordable housing loans and other community development projects created by BAC's Community Development Banking are performing within BAC's risk parameters and industry standards.

* * * *

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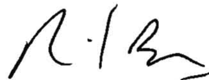

Reginald J. Brown
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