UNITED STATES OF AMERICA
FEDERAL DEPOSIT INSURANCE CORPORATION

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BOARD OF DIRECTORS

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MEETING

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CLOSED TO PUBLIC OBSERVATION

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THURSDAY,

JANUARY 15, 2009

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The Board convened at 10:03 p.m. in the Federal Deposit Insurance Corporation Board Room, 550 17th Street, N.W., Washington, D.C., Sheila C. Bair, Chairman, presiding.

PRESENT:

SHEILA C. BAIR, Chairman
MARTIN J. GRUENBERG, Vice Chairman
THOMAS J. CURRY, Director (via telephone)
JOHN C. DUGAN, Director, Comptroller of the Currency (via telephone)
JOHN M. REICH, Director, Office of Thrift Supervision (via telephone)

C-L-O-S-E-D S-E-S-S-I-O-N

10:03 p.m.

CHAIRMAN BAIR: I would like to call this meeting to order. I need a Sunshine motion. May I have a Sunshine motion?

VICE CHAIRMAN GRUENBERG: I move.

CHAIRMAN BAIR: May I have a second?

DIRECTOR DUGAN: Second.

CHAIRMAN BAIR: All in favor say aye.

(Chorus of ayes.)

CHAIRMAN BAIR: Motion is agreed to. There is no summary agenda.

There is one item on the discussion agenda. It is a memorandum and resolution relating to Bank of America, National Association, Charlotte, North Carolina, and its affiliated insured depository institutions. John Corston, Art Murton, and John Thomas will present the case. Chris Newbury will present the case in lieu of Art

Murton.

Please begin.

MR. CORSTON: Good evening. For those that are joining on the telephone, this is John Corston. I'll be covering the supervisory history and condition. Following me will be Chris Newbury doing the systemic risk portion of the case, and he will be followed by John Thomas who will be presenting the term agreement.

Bank of America is a nationally chartered bank that is the lead bank within the Bank of America Corporation. Bank of America had $1.4 trillion of assets and, prior to the acquisition of Merrill Lynch, represented approximately 80 percent of Bank of America Corporation's consolidated assets. Bank of America Corporation's risk profile has increased over the past year as a result of trading losses, declining asset quality, largely in home equity and credit card portfolios and acquisition of three high risk institutions including LaSalle, Countrywide, and Merrill Lynch.

Negative market perception of Bank of America Corporation has been building recently. Over the past year, the holding company's stock declined approximately 70 percent on concerns associated with several factors, including the cost of the Merrill Lynch merger. Market reaction to the Bank of America Corporation's fourth quarter 2008 results may disrupt available funding sources to the point that Bank of America Corporation would be unable to meet its ongoing obligations. FDIC staff estimates, in the event of a severe negative market reaction, Bank of America may, at a minimum, require heavy utilization of various government funding programs.

Bank of America Corporation's capital position has become strained as a result of recent acquisitions and losses, particularly in terms of tangible equity capital. The 2009 earnings outlook for Bank of America Corporation is not favorable. While management projects net income for the company on a combined basis, FDIC and OCC supervisory staff believe the projection to be overly optimistic and developed an adjusted forecast showing a loss of approximately $3 billion. The eight largest legal entities under the Bank of America Corporation are rated CAMELS Composites "2" with the exception of Countrywide Bank, FSB, and Merrill Lynch Bank and Trust Company, which are both rated Composite "3s".

With that, I'll turn it over to Chris Newbury.

MR. NEWBURY: The market reaction to Bank of America Corporation's operating results may have systemic consequences given the size of the institution and the volume of counterparty transactions involved. Significant market disruption could occur if counterparties lose confidence in Bank of

America Corporation's ability to fund ongoing operations. The consequences would extend to the broader economy.

The U.S. economy is already in the longest recession since 1992. Disruptions to financial markets have already contributed to a sharp downturn as demonstrated by many coincident indicators, such as payroll employment declining 2.6 million jobs in 2008 and over 1.5 million in the fourth quarter, retail sales showing a sharp decline in the fourth quarter, and credit becoming less available without the assistance of the Federal government through its various programs.

These developments and others point to a clear relationship between the financial market turmoil of recent months and impaired economic performance. This could be expected to worsen if Bank of America Corporation does not receive assistance. Staff believes that the proposed assistance will serve to mitigate these systemic risks.

MR. THOMAS: A term sheet has been approved by Bank of America and was recently approved by the Federal Reserve Board subject to the other participating entities approving. The terms are structured in a manner very similar to the Citi transaction that was done a few weeks ago. Approximately $115 billion in assets will be ring-fenced. Bank of America will take the first $10 billion in loss from that portfolio. Bank of America will take 10 percent of all additional losses from that portfolio.

The second loss position is slightly different from the Citi transaction. The second loss position will be shared by Treasury and FDIC. Treasury will take 75 percent of that $10 billion loss while the FDIC will take 25 percent. The total loss cannot exceed $10 billion, and that's with Citi taking its own 10 percent. So the actual losses will have to be 11.1 basically before the two U.S. parties would have the full $10 billion in loss. There's a cap on what the FDIC is exposed to here of $10.5 billion.

In exchange for the agreement to protect against the loss the Treasury and the FDIC are entered into -- are entering into, Citi will issue $4 billion in preferred stock subject to adjustment if it turns out that that is necessary in order for that to produce a result that no loss is likely on this transaction. Our expectation is that there would be -- our estimated loss -- is that there is a zero estimated loss on this. Doesn't mean that it'll necessarily come in at zero, but that's -- it could be better, it could be worse, estimated loss of zero with the compensation. If Citi -- sorry, if Bank of America goes through those first two levels of loss, then the Federal Reserve will lend against a portfolio of assets on a nonrecourse basis and effectively recover the tail risk.

Assuming that this is approved by

our Board and that there is a proper systemic risk determination made by Treasury, a definitive agreement will have to be negotiated by the four parties.

We would be happy to respond to questions.

CHAIRMAN BAIR: Okay. Thank you. Vice Chairman Gruenberg.

VICE CHAIRMAN GRUENBERG: Let me just ask, John. In regard to the ongoing valid exposure that's going to be jointly shared by the Treasury and the FDIC, my understanding is that the logic of the 75/25 division there was basically a reflection of the division of the assets being covered by this agreement in terms of their division between the insured bank and the affiliated Merrill Lynch company. Is that correct?

MR. THOMAS: It's both an approximation of the amount that's within the insured depository institutions. It's also an approximate -- the same rough percentage also applies the total assets between Bank of America Corporation and Merrill Lynch Corporation.

CHAIRMAN BAIR: No, the 25 percent is because 25 percent of the insured came out of the insured depository institution. I think this was about 80/20 between Merrill Lynch and B of A.

VICE CHAIRMAN GRUENBERG: Thank you.

CHAIRMAN BAIR: Director Curry.

DIRECTOR CURRY: I have really no questions -- I think the case demonstrates that Bank of America and Merrill Lynch have built on systemic risk considerations and that our $2.5 billion investment in the shared loss coverage is appropriate given the relationship between the insured institutions and the Merrill Lynch aspects of Bank of America.

CHAIRMAN BAIR: Okay. Thank you. Director Dugan.

DIRECTOR DUGAN: Thank you, Madame

Chairman.

I think, if Bank of America had not acquired Merrill Lynch, I don't think we'd be here tonight. But I think the projected or the announced losses tomorrow after tax of $15 billion from Merrill Lynch seems to be far larger than any of the other large companies' reporting. That plus the projected economy, the losses from the deepening recession is just too much of a perception risk given the general economic climate.

And I support the systemic risk determination for that reason. I think that the possibility that -- that perception of losses could not only affect the bank but other financial institutions and other depository institutions means that this is very important that the government both inject the capital and that the FDIC provides the systemic risk determination and the $2.5 billion asset guarantee which I hope will never be called on, but I think it's prudent under the circumstances. So I support the determination.

CHAIRMAN BAIR: Director Reich.

DIRECTOR REICH: Well, I do have two or three questions. The first thing I noticed on the very first page of the case was that the ratings were dated as of January of 2007. Are those the most recent ratings?

MR. CORSTON: The ratings are the ratings of record although they are under current review by the primary Federal regulator.

DIRECTOR REICH: We have three regulators onsite, presumably -- I'm just surprised that January of '07 is the most recent rating and I notice that there are "2s" across the board which seems probably not likely in light of this meeting.

CHAIRMAN BAIR: John Dugan, would you have any response to that?

DIRECTOR DUGAN: Well, I think the ratings as they were on January 1, before the acquisition that we talked about and before the change in the climate, is a very different world than the one we're in now. As John Corston said, the ratings are under review, and I think it's likely we will see some downgrade.

DIRECTOR REICH: I presume that our authority to act is predicated basically on a failing-bank scenario that we don't have the authority to act unless it's to prevent a failure. Is that --

MR. THOMAS: Prevent a failure or substantial risk of failure, yes.

DIRECTOR REICH: Page nine of the case describes B of A's capital as -- is considered as adequate. Is that a supervisory determination or somebody's quick write-up?

MR. CORSTON: Bank of America capital is considered adequate from a regulatory standpoint. One of the things they do struggle with, Director Reich, is the tangible equity ratio and -- which has got quite a bit of recognition from analysts, and it does somewhat constrain them in their ability to go out and raise additional capital with the structure of virtually the fact that the common equity stockholders will be in line for the first loss. However, there is some preferred stock in front of them that will be taking in substantial amounts of income in the near future. So it makes it a little more difficult for them to raise capital, and really what the institution is struggling with at this point is more of a liquidity and loss-of-confidence crisis and should counterparties turn on this institution like they have on other institutions, it would face a failure by virtue of the fact that it could no longer fund itself.

DIRECTOR REICH: What is their liquidity situation? Has there been an outflow? What's the trend and how much liquidity do they have?

MR. CORSTON: Their current

liquidity as reported as of today has been relatively stable. They do have fairly good resourcing in liquidity to draw from and including lines from the various government programs. The areas that are probably the greatest risk to them from a liquidity standpoint, first and foremost, in the trading area is the counterparty risk and the ability to post collateral should they need to. If they had counterparties calling them in substantial numbers, it would outstrip their ability to post the collateral.

The other area of somewhat lesser risk but certainly one of concern is the area of the repo market. They have a very large position in funding in repos, and the ability to keep that, the ability to use the repos, could be constrained, although they do have access to Federal Reserve programs. So they would have somewhat of an outlet there.

But between, really, the counterparty risk and then, of course, the possibility of some other funds deposits running off, it would certainly represent a substantial risk, and it's very hard to gauge the degree that it would actually run or how fast, and that's where it becomes a concern.

CHAIRMAN BAIR: John, I would also say I think these are really excellent questions, and we asked these questions over the past several days of both the Fed and the OCC. I agree with you that I think the systemic-risk exception is there to address. It's truly a situation where there is a chance of failure that would have systemic ramifications.

So I think John is doing an excellent job defending the Board case. This relies heavily, though, on data analysis provided by the Fed and the OCC. We felt very strongly that we need to proceed with this systemic-risk determination and the assistance we're providing.

DIRECTOR REICH: Do we know -- do

we have a handle on what the total Federal Government assistance is, including this, to B of A through the Fed, the Treasury and the FDIC?

CHAIRMAN BAIR: Well, this brings their total TARP funding up to $45 billion. Chris, do you know off the top of your head how much? I think they have significant capacity left with TLGP. Mike -- do you know what their issuances to date have been?

MR. KRIMMINGER: I don't know the total. I don't know the total issuances, but they have about 84 percent of their remaining cap space left on TLGP.

CHAIRMAN BAIR: Right. But they've certainly issued several billion of debt already, guaranteed debt. We obviously insure their deposits and -- I don't know. We've actually begun discussing with . . . about perhaps aggregating all of our information so that we know what the government's total exposure is to each of these large institutions. We don't have that number right now for B of A. That's another good question.

DIRECTOR REICH: I guess my last question pertains to the profit projection for 2009. On page 10 of the case, the case, B of A is projecting a profit of $14.8 billion. But I think I heard you say and somewhere in the case it projects a loss of maybe $3 billion. Does the OCC and the Fed, are they in agreement on the $3 billion loss number for 2009?

MR. CORSTON: The projection, Director Reich, my understanding was that we are in concurrence with both the FDIC and OCC at $3 billion.

DIRECTOR REICH: And is our assistance to the bank or to the holding company?

CHAIRMAN BAIR: For the ring-fencing, 25 percent of the assets are of the depository institutions. Seventy-five of the assets are outside the depository institutions, which is why we're only taking a $2.5 billion risk exposure on this transaction of $10 billion that the government will share in losses before the Fed would step in for the remainder through nonrecourse lending. But I think as John Dugan said, this really has been necessitated by their acquisition of Merrill Lynch, which as you know, is an investment bank.

DIRECTOR REICH: Okay. I have no other questions. Thank you.

CHAIRMAN BAIR: Okay. Great. Well, we are here today as team players, and we are joining with the Fed and the Treasury to approve the systemic risk case and to provide this package of assistance. I think there are a lot of questions about this. I've had a lot of questions about this. But in the interest of interagency cooperation, I have asked the staff to prepare this case and we've scheduled this meeting and move ahead and I will be voting for the systemic risk determination.

I hope desperately that this is the last one-off bailout deal that we do. The FDIC and others have been saying for quite some time we need a programmatic approach to these troubled assets.

It impairs public confidence in the regulatory system and in this whole process to do these one-off deals. I think this is going to lead to another bad round of criticism of the agencies, but we are doing what we need to do. But I hope we will very soon have in place a programmatic response that is transparent and open and that all banks that are willing to meet the criteria will be able to participate in, because I think these one-off deals are quite harmful.

So with that may I have a motion with respect to the Bank of America National -- I'm sorry, Marty. Did you have something else -- with respect to Bank of America National Association, Charlotte, North

Carolina and its affiliated insured depository institutions.

DIRECTOR DUGAN: So moved.

CHAIRMAN BAIR: May I have a second?

VICE CHAIRMAN GRUENBERG: Second.

CHAIRMAN BAIR: All in favor say aye.

(A chorus of ayes.)

CHAIRMAN BAIR: Opposed?

(No verbal response)

CHAIRMAN BAIR: The motion is --

DIRECTOR REICH: I have a question.

CHAIRMAN BAIR: Sure.

DIRECTOR REICH: Another question. Is there any concern that this situation may cause, exacerbate Citi's problem?

CHAIRMAN BAIR: Well, I think Citi has --

DIRECTOR REICH: Of just market perception.

CHAIRMAN BAIR: Yes, I know. I

hear you. Another concern I've had with this case is whether this makes B of A will look like they are in worse shape than they are because they remain well capitalized after this transaction, even under some severe stress tests, they remain well capitalized by regulatory standards. So I wonder whether we are helping or hurting B of A actually with this, but we're doing it.

So I don't know. I think Citi has got its own set of problems certainly to the extent this will be read as a much broader widening of economic distress. It's probably going to hurt everybody.

DIRECTOR REICH: Yes, I think there's been the perception that B of A has been sort of -- well, certainly their acquisitions of Countrywide and Merrill Lynch has given them greater exposure to losses, but there nevertheless has been the perception that they are among the strongest of institutions, and I think this is going to be a surprise to the market.

DIRECTOR DUGAN: This is John. My only comment would be, it would be a lot more surprise if it came out with a loss in November [unclear].

DIRECTOR REICH: Yes.

DIRECTOR DUGAN: I think that's a potential. I think that's the very -- I mean, I think it will be a very big surprise, indeed, the size of the loss. That's exactly the shock that I think we're all fearful of and will generate the systemic risk that can have such harmful effects and the idea is that this will counteract that perception as much as possible. I think it's necessary -- I definitely think it's the appropriate thing to do. I don't think the alternative is what we should do.

CHAIRMAN BAIR: Well, I would also add that I don't think the criteria for systemic risk determination is that you're big and you're going to have a loss. Other big institutions are going to have a loss and I do think there's a very legitimate question about whether this makes the B of A situation look worse than it is.

But I think it's the worse of two evils, and, so, perhaps a risk of making B of A look worse than it is is not as great as the risk of a very severe market reaction. So I think we are just doing the best we can in a very difficult situation.

DIRECTOR REICH: I just hope there isn't any negative fallout for Citi because of this situation.

CHAIRMAN BAIR: Me, too.

DIRECTOR REICH: Anyway.

CHAIRMAN BAIR: Okay. So is it unanimous? Are we all in favor of saying aye? So thank you. That's okay. Great. Thank you very much. That concludes the discussion agenda. There are no other comments or new business. So once again I thank the staff, John Thomas, in particular, who has been carrying a lot of the load here on these systemic risk Board cases, and sorry that you're away from your families late tonight. Go home. You got a three-day weekend coming, four-day weekend, actually, with Inaugural Day and I hope we won't be calling you.

The meeting is adjourned. Thank you.

(Whereupon, the above-entitled matter was concluded at 10:27 p.m.)