Minutes

of

The Meeting of the Board of Directors

of the

Federal Deposit Insurance Corporation

By Conference Call

Closed to Public Observation

January 15, 2009 - 10:03 P.M.

At 10:03 p.m. on Thursday, January 15, 2009, the Chairman called a special meeting of the Board of Directors of the Federal Deposit Insurance Corporation which was held by means of a telephone conference call.

Sheila C. Bair, Chairman of the Board of Directors; Martin J. Gruenberg, Vice Chairman of the Board of Directors; Thomas J. Curry, Director (Appointive); John C. Dugan, Director (Comptroller of the Currency); John M. Reich, Director (Director, Office of Thrift Supervision); John F. Bovenzi, Deputy to the Chairman and Chief Operating Officer; Jesse O. Villarreal, Chief of Staff; Michael H. Krimminger, Special Advisor for Policy, Office of the Chairman; Barbara A. Ryan, Deputy to the Vice Chairman; Lisa K. Roy, Deputy to the Director (Appointive); William A. Rowe, III, Deputy to the Director (Comptroller of the Currency); Claude A. Rollin, Deputy to the Director (Director, Office of Thrift Supervision); John V. Thomas, Acting General Counsel; Sandra L. Thompson, Director, Division of Supervision and Consumer Protection; Arthur J. Murton, Director, Division of Insurance and Research; Mitchell L. Glassman, Director, Division of Resolutions and Receiverships; Eric J. Spitler, Director, Office of Legislative Affairs; Andrew S. Gray, Director, Office of Public Affairs; and Robert E. Feldman, Executive Secretary, participated in the meeting.

Also participating in the meeting were: Roberta K. McInerney, Valerie J. Best, and Mark G. Flanigan, from the Legal Division; Christopher J. Spoth, Daniel E. Frye, Robert W. Mooney, John H. Corston, and Pete D. Hirsch, from the Division

of Supervision and Consumer Protection; Tiffany K. Froman, from the Division of Information Technology; Christopher J. Newbury and Mike E. Anas, from the Division of Insurance and Research; James R. Wigand, from the Division of Resolutions and Receiverships; and Alice C. Goodman, from the Office of Legislative Affairs.

Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Douglas W. Roeder, Senior Deputy Comptroller, Large Bank Supervision, Grace E. Dailey, Deputy Comptroller, Large Bank Supervision, and Morris Morgan, National Bank Examiner, Office of the Comptroller of the Currency; and Scott M. Polakoff, Senior Deputy Director and Chief Operating Officer, Office of Thrift Supervision also participated in the meeting.

Chairman Bair presided at the meeting; Mr. Feldman acted as Secretary of the meeting.

Chairman Bair called the meeting to order. Vice Chairman Gruenberg then moved that the Board of Directors determine that Corporation business required its consideration of the matters which were to be the subject of the meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters which were to be the subject of the meeting in a meeting open to public observation; and that the matters could be considered in a meeting closed to public observation by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (9)(A)(ii), and (c)(9)(B)). Director Dugan seconded the motion and, with Director Curry, Director Reich, and Chairman Bair concurring, the motion was carried.

Staff presented its recommendation that the Board find that significant operational disruptions of Bank of America Corporation, Charlotte, North Carolina ("BAC"), and its insured affiliate institutions would have serious adverse effects on domestic economic conditions and financial stability and that significant operational impairments to BAC and its insured depository affiliate institutions would seriously affect counterparty relationships in Qualified Financial Contract markets, and would significantly disrupt short-term interbank lending and bank senior and subordinated debt markets, as well as related markets in derivative products and other markets, in which BAC is a significant participant. Further, staff stated that it is highly likely that,

if any significant legal entity within BAC suffers a loss of market confidence, this would have a serious adverse effect on all BAC legal entities, including the second largest insured depository institution in the United States. While BAC is undergoing significant stress, staff pointed out that it is of the opinion that management is competent and there is no substantive evidence that management has failed to comply with applicable laws, rules, and supervisory directives and orders. Consequently, staff recommended that the Board make a systemic risk determination and authorize staff to take action required to avoid or mitigate such risk. Staff informed the Board that, based on preliminary information, the most likely outcome is that provision of the proposed assistance will not result in a loss to the Deposit Insurance Fund.

John H. Corston, Associate Director, Large Institutions and Analysis Branch, Complex Financial Institutions, Division of Supervision and Consumer Protection, informed the Board that Bank of America, National Association, Charlotte, North Carolina ("BANA"), is a nationally chartered bank that is the lead bank within BAC, a financial holding company regulated by the Board of Governors of the Federal Reserve System ("Federal Reserve"). He stated that BANA is the second largest bank in the United States, with $1.4 trillion of assets and that, prior to BAC's acquisition of Merrill Lynch & Co., Inc. ("Merrill Lynch"), BANA represented approximately 80 percent of BAC's consolidated assets. He also noted that BANA is the largest holder of insured deposits in the United States, with over 10 percent of total domestic deposits.

Mr. Corston continued, noting that BANA's core business is its domestic retail banking franchise with over 6,100 branches in 33 states and that it participates in virtually every financial activity permissible to banks. He added that BAC held seven insured bank charters in addition to that of BANA: Countrywide Bank, FSB, Alexandria, Virginia ("Countrywide"); FIA Card Services, National Association, Wilmington, Delaware; Merrill Lynch Bank USA, Salt Lake City, Utah; Merrill Lynch Bank & Trust Co., FSB, New York, New York ("MBLTC"); Bank of America Oregon, National Association, Portland, Oregon; Bank of America, Rhode Island, National Association, Providence, Rhode Island; and Bank of America California, National Association, San Francisco, California. Beyond those banks, Mr. Corston said, BAC has four significant non-insured affiliates: Banc of America Securities, LLC, a full-service investment bank and brokerage firm; Banc of America Investment Services, Inc., a retail brokerage business; Banc of America Specialist, Inc., a New York

Stock Exchange specialist firm; and Columbia Management, the nation's eighth largest mutual fund company.

Next, Mr. Corston explained that BAC'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 higher risk institutions since October 2007, including LaSalle National Bank, Chicago, Illinois; Countrywide; and Merrill Lynch. He emphasized that Merrill Lynch reported $23.8 billion in net losses prior to the fourth quarter 2008, and that the merger with Merrill Lynch significantly increases BAC's exposure in 2009.

Mr. Corston continued, stating that negative market perception of BAC has been building recently; that, over the past year, the holding company's stock price declined approximately 70 percent on concerns associated with several factors, including the cost of the Merrill Lynch merger, and general uncertainty regarding further deterioration in credit quality and capital markets; that BAC will announce fourth quarter results that are significantly lower than market expectations for both legacy BAC and legacy Merrill Lynch on January 20, 2009; that resulting post-merger tangible common equity capital levels will also be reported well below expectations; and that market reaction to these announcements could significantly impair BAC's access to required funding sources and its ability to meet obligations going forward.

Mr. Corston then stated that BAC's capital position has also become strained with recent acquisitions and losses, particularly in terms of tangible common equity capital. While BAC's regulatory capital ratios are considered adequate, he said, tangible equity capital is low and presents market perception issues, as equity analysts, rating agencies, and counterparties have increased their focus on common tangible capital. Mr. Corston continued, stating that fourth quarter 2008 losses in conjunction with 2009 forecasted net operating losses of $3 billion will further strain the capital position and impair the ability to raise common equity. Next, he stated that the 2009 earnings outlook for the BAC is not favorable, and that the Corporation and the Office of the Comptroller of the Currency's ("OCC") supervisory staff believe that BAC's management's projection of net income for the company on a combined basis of approximately $14.8 billion ($13.4 billion for legacy BAC and $1.4 billion for legacy Merrill Lynch) is very optimistic. He said that staff has developed an adjusted forecast showing a loss of $3.0 billion, based on higher loan

losses and larger provisions to reflect continued deterioration in the credit portfolios, the lack of securitizations in 2009, and decreased trading results associated with continued market disruptions. Mr. Corston concluded his presentation by noting that all of BAC's insured depository institutions are rated CAMELS composite "2," with the exception of Countrywide and MLBTC, which are each rated composite "3."

Christopher J. Newbury, Associate Director, Risk Analysis Branch, Risk Analysis and Banking Statistics, Division of Research, informed the Board that the risk profile of BAC is increasing rapidly due to negative market perception resulting from poor performance, asset quality problems, and high-profile acquisitions, with liquidity pressures that may increase to critical levels following the announcement of fourth quarter 2008 operating results that are significantly worse then market expectations.

Next, Mr. Newbury stated that market reaction to BAC's operating results may have systemic consequences, given the size of the institution and the volume of counterparty transactions involved. Without a systemic risk determination and implementation of proposed measures outlined being proposed to the Board, he said that significant market disruption may ensue as counterparties lose confidence in BAC's ability to fund ongoing operations, whereas staff believes the proposed assistance, as outlined by staff, will serve to mitigate this systemic risk.

Mr. Newbury then said that the consequences of not providing open bank assistance to BAC would likely have major systemic effects. He observed that both financial stability and overall economic conditions would be adversely affected, and that staff believes the consequences could extend to the broader economy. Mr. Newbury continued, explaining that the U.S. economy entered a recession in December 2007 that is already the longest since the 16-month recession that ended in 1982, as demonstrated by the decline in payroll employment each month in 2008; by the elimination of 2.6 million jobs last year, with over 1.5 million of those having been lost in the fourth quarter; and by the sharp declines in retail sales each month of fourth quarter 2008. Mr. Newbury concluded his presentation by stating that these developments, among others, point to a clear relationship between the financial market turmoil of recent months and impaired economic performance that could be expected to worsen further if BAC and its insured subsidiaries were

allowed to fail, and that staff believes that the proposed assistance will serve to mitigate these systemic risks.

John V. Thomas, Acting General Counsel, then informed the Board that, in order to prevent the foregoing systemic risk, staff was recommending that the Board authorize the Corporation to enter into an agreement with BAC, the United States Department of the Treasury ("Treasury"), and the Federal Reserve in exchange for consideration. Under the agreement, Mr. Thomas said, Treasury will inject $20 billion in capital from the Troubled Asset Relief Program ("TARP"), and, in addition, the United States Government ("USG") would provide for shared loss coverage on specified BAC assets, with the Corporation's potential loss protected by the issuance of preferred stock by BAC. He stated further that the Corporation and the TARP will provide guarantees on certain residential assets for 10 years and certain other assets for a period of 5 years. BAC, Mr. Thomas said, will bear the first $10 billion in losses, while additional losses will be shared with the Corporation, Treasury, and the Federal Reserve covering 90 percent of the losses and BAC bearing 10 percent. After the first $10 billion in losses, Mr. Thomas continued, the Corporation and Treasury will cover losses pro rata in proportions of 25 percent for the Corporation and 75 percent for Treasury up to a cap of $2.5 billion for the Corporation and $7.5 billion for the Treasury. He stated that further losses will be covered 90 percent by the Federal Reserve through nonrecourse lending. The Corporation, Mr. Thomas stated, will receive compensation in the form of what is projected to be $1 billion in preferred stock and warrants with an aggregate exercise value of 10 percent of the amount of preferred issued.

Mr. Thomas explained to the Board that BAC will manage the assets, with instructions provided by the Corporation, the TARP, and the Federal Reserve. The terms of the transaction, said Mr. Thomas, will include a foreclosure mitigation policy agreeable to the USG, and, in addition, BAC will be subject to specific limitations on executive compensation and dividends during the loss share period. He then described the BAC proposed asset pool, which contains up to $115 billion of financial instruments including cash assets with a current book (i.e., carrying) value of up to $32 billion and a derivatives portfolio with maximum potential future losses of up to $83 billion.

Next, Mr. Thomas stated that the Corporation and OCC have determined that the insured entities meet the requirements under section 13(c)(8) of the Federal Deposit Insurance Act ("FDI Act") for receiving direct financial assistance before the

appointment of a receiver. Additionally, he said, assistance will increase existing capital levels and improve liquidity.

Director Curry commented that the staff recommendation is appropriate, given the relationship between the insured institutions and Merrill Lynch. Director Dugan, in turn, commented that the issue presented by the case at hand would not be occurring had BAC not acquired Merrill Lynch. He added that he supported the systemic risk determination because the losses from the deepening recession create too much perception risk and the possibility that BAC's losses due to the Merrill Lynch acquisition could affect other depository institutions.

Director Reich called to the Board's attention the fact that the ratings provided for BAC in the case materials accompanying the Board presentation were dated as of January 1, 2007, and therefore asked whether those were the most recent ratings available for BAC. Mr. Corston responded that the ratings provided are the ratings of record even through they are currently under review by BAC's primary Federal regulator. Director Reich expressed his surprise that those were the most current ratings and that those ratings were "2" in every category in light of the reasons the Board was gathered for this meeting. Chairman Bair asked Director Dugan, the primary Federal regulator of BAC's lead bank—BANA—to respond to Director Reich's concerns.

Director Dugan responded that the ratings of record were put in place before BAC's acquisition of Merrill Lynch and before the changes in economic climate that were presented by staff. In addition, he said he thought it was likely that the OCC would be downgrading at least some of BANA's ratings components.

Director Reich then asked Mr. Thomas to confirm that the Board's authority to take the action recommended is predicated on the existence of a failing-bank scenario and that the Board lacked the authority to so act in that manner unless it is to prevent a failure. Mr. Thomas confirmed that to be the case. Chairman Bair indicated to Director Reich that the above questions and his subsequent questions regarding BAC's capital and liquidity were excellent questions and that the Corporation has posed them over the past few days to the Federal Reserve and the OCC. She then said that the systemic risk exception exists where a chance of a failure would have systemic ramifications. While she observed that Mr. Thomas had well justified the use of the systemic risk exception in this instance, she pointed out

that the Corporation was relying on data analysis by the Federal Reserve and the OCC. As a result, Chairman Bair stated that the Corporation very much needs to proceed with a systemic risk determination with respect to BAC.

Chairman Bair indicated that the Corporation was taking a role in the transaction as a team player along with the Federal Reserve and Treasury to prove the systemic risk case and to provide the package of assistance described. She added that she hoped very much that this was the last individual bailout deal that the Corporation would be doing, and she pointed out that the Corporation and others have been saying for quite some time that a programmatic approach is needed for troubled assets. She noted that it impaired the public's confidence in the regulatory system to be performing such individual deals. She expressed her concern that this transaction would lead to another bad round of criticism of the agencies but affirmed that the agencies were doing what they need to do pending the development of 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.

Then, in accordance with the recommendation of staff and on motion of Director Dugan, seconded by Vice Chairman Gruenberg, concurred in by Director Curry, Director Reich, and Chairman Bair, the Board adopted the following resolution:

(1) finding that the instability of the insured bank affiliates of Bank of America Corporation ("Banks") would have serious adverse effects on economic conditions or financial stability and would create systemic risk to the credit markets;

(2) finding that severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources and the Banks are insured depository institutions under such threat of instability and that the Board takes this action in order to lessen the risk to the insurance fund posed by the Banks;

(3) finding that the recommended actions will mitigate the serious adverse effects, and systemic risks, posed by the Banks;

(4) finding that the proposal, which involves the provision of assistance or other action as authorized under section 13(c)(1) of the FDI Act, 12 U.S.C. § 1823(c)(1), in the form of guarantees against loss to, or contributions to, the Banks, will mitigate the serious adverse effects on economic conditions or financial instability that would be caused by the Banks' continued seriously weakened condition;

(5) finding that the conditions for receiving direct financial assistance before the appointment of a receiver under section 13(c)(8)(A)(i) and (ii) of the FDI Act have been satisfied;

(6) authorizing the Chairman of the Board, or her designee, to provide the written recommendation to the Secretary of the Treasury specified under section 13(C)(4)(G)(i) of the FDI Act, 12 U.S.C. § 1823(C)(4)(G)(i); and

(7) authorizing the Director, Division of Resolutions and Receiverships, or his designee, and all other Corporation staff to take all appropriate action to implement the provision of assistance authorized hereunder, including, but not limited to, credit support in the form of loan guarantees, and loss sharing; and to take any other action necessary and appropriate in connection with this matter:

WHEREAS, staff has presented information to the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC" or "Corporation") indicating that the recent unprecedented disruption in credit markets and the resultant effects on the abilities of banks to fund themselves and to intermediate credit place the United States in danger of suffering adverse economic conditions and financial instability; and

WHEREAS, these conditions threaten the stability of a significant number of insured depository institutions, thereby increasing the potential for losses to the insurance fund in the resolutions of such insured depository institutions; and

WHEREAS, staff has advised the FDIC Board that Bank of America, National Association, Charlotte,

North Carolina, Countrywide Bank, FSB, Alexandria, Virginia, FIA Card Services, National Association, Wilmington, Delaware, Merrill Lynch Bank USA, Salt Lake City, Utah, Merrill Lynch Bank & Trust Co., FSB, New York, New York, Bank of America Oregon, National Association, Portland, Oregon, Bank of America, Rhode Island, National Association, Providence, Rhode Island, Bank of America California, National Association, San Francisco, California ("Banks"), and their affiliates are in seriously weakened condition; and

WHEREAS, staff has advised that severe financial conditions exist which threaten the stability of the Banks which are insured depository institutions possessing significant financial resources; and

WHEREAS, a proposal for the stabilization of the Banks and their affiliates without the appointment of the FDIC as receiver has been developed in consultation with the Board of Governors of the Federal Reserve System ("Federal Reserve Board") and the Secretary of the Treasury ("Treasury") (collectively, the "USG"), which involves the USG provision of guarantees against loss on certain residential assets for 10 years and certain other assets for a period of 5 years; and

WHEREAS, Bank of America Corporation, Charlotte, North Carolina ("BOA"), will take a first loss position equal to $10 billion; and

WHEREAS, for losses above $10 billion, there is a loss sharing agreement where losses are shared 10 percent by BOA and 90 percent by the USG with Treasury and the Corporation taking a second loss position up to $10 billion, with the Corporation taking a 25% share of such losses up to a maximum of $2.5 billion, and the Federal Reserve Board having agreed to take the remaining risk through non-recourse lending on the pool of assets ("Proposal"); and

WHEREAS, the Corporation is receiving $1 billion in preferred stock as compensation for its taking the 25% participation in the second loss position; and

WHEREAS, the Proposal is subject to prudential regulatory oversight and executive compensation restrictions, with the guarantees having a limited duration, and staff believes that the Proposal will avoid or mitigate the serious adverse effects on economic conditions or financial stability is the most cost effective available method; and

WHEREAS, the Corporation and the Office of the Comptroller of the Currency have determined that the bank meets the conditions under section 13(c)(8)(A)(i) and (ii) of the Federal Deposit Insurance Act ("FDI Act") for receiving direct financial assistance before the appointment of a receiver; and

WHEREAS, staff has recommended that the FDIC Board make a systemic risk recommendation supporting action or the provision of assistance by the FDIC as necessary to avoid or mitigate such risk; and

WHEREAS, the Corporation has been advised that the Federal Reserve Board is expected to make a similar recommendation and that the Treasury, after consultation with the President, is expected to make the systemic risk determination in this situation.

NOW, THEREFORE, BE IT RESOLVED that the Board finds that the instability of the Banks would have serious adverse effects on economic conditions or financial stability and would create systemic risk to the credit markets.

BE IT FURTHER RESOLVED, that the Board finds that severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources and the Banks are insured depository institutions under such threat of instability and that the Board takes this action in order to lessen the risk to the insurance fund posed by the Banks.

BE IT FURTHER RESOLVED, that the Board finds that the recommended actions will mitigate the serious adverse effects, and systemic risks, posed by the Banks.

BE IT FURTHER RESOLVED, that the Board finds that the Proposal involves the provision of assistance or other action as authorized under section 13(c)(1) of the FDI Act, 12 U.S.C. § 1823(c)(1), in the form of guarantees against loss to, or contributions to, the Banks, and that the Proposal will mitigate the serious adverse effects on economic conditions or financial instability that would be caused by the Banks' continued seriously weakened condition.

BE IT FURTHER RESOLVED, the Board finds that the conditions for receiving direct financial assistance before the appointment of a receiver under section 13(c)(8)(A)(i) and (ii) of the FDI Act have been satisfied.

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board, or her designee, to provide the written recommendation to the Secretary of the Treasury specified under section 13(C)(4)(G)(i) of the Act, 12 U.S.C. § 1823(C)(4)(G)(i).

BE IT FURTHER RESOLVED, the Board hereby authorizes the Director, Division of Resolutions and Receiverships, or his designee, and all other FDIC staff to take all appropriate action to implement the provision of assistance or other actions authorized hereunder, including but not limited to: credit support in the form of loan guarantees, and loss sharing; and to take any other action necessary and appropriate in connection with this matter.

[EXECUTIVE SECRETARY'S NOTE: On Thursday, January 15, 2009, the United States Government entered into an agreement with Bank of America Corporation, Charlotte, North Carolina, to provide a package of guarantees, liquidity access, and capital, as part of its commitment to support financial market stability, whereby, the Department of the Treasury and the Corporation will provide protection against the possibility of unusually large losses on an asset pool of approximately $118 billion of loans, securities backed by residential and commercial real estate, and other such assets, the large majority of which were assumed by Bank of America Corporation as a result of its acquisition of Merrill Lynch & Co., Inc., and which will remain on Bank of America Corporation's balance sheet. As a fee for that arrangement, Bank of America Corporation will issue preferred shares to the Treasury and the Corporation. In addition, Bank of America

Corporation will comply with enhanced executive compensation restrictions and implement the Corporation's mortgage modification program.]

Documents and materials relevant to the Board's consideration of the foregoing are marked an exhibit for identification, are filed in the jacket of this meeting, and, by reference, are made a part of these minutes and the permanent files of the Board of Directors.

Following the Board's action in the above matter, the Board members and staff briefly discussed their concern that the need for the BAC transaction may have negative consequences for the stability of Citigroup, Inc., and its insured affiliate banks and thrifts, which were suffering from their own unique problems and had already been the recipient of USG assistance, including assistance from the Corporation, on November 23, 2008.

There being no further business, the meeting was adjourned.

Executive Secretary