

**ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA
CONSUMER PROTECTION DIVISION**

**IN THE MATTER OF
BANK OF AMERICA CORPORATION**

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the State of North Carolina, by and through Attorney General Roy Cooper (the “Attorney General”), and Bank of America Corporation (“BAC”).

BACKGROUND

1. In February, 2009, the Attorney General initiated an investigation (hereafter, the “Investigation”) arising from the Attorney General’s concerns regarding possible violations of North Carolina or federal law in connection with the January 1, 2009 merger between BAC and Merrill Lynch & Co., Inc. (“Merrill”), relating to allegations regarding BAC’s failure to disclose the approximately \$3.6 billion in bonuses awarded on an alleged accelerated schedule to Merrill’s employees in 2008, and to allegations regarding the decision not to disclose Merrill’s interim and projected fourth quarter 2008 losses.

2. The U.S. Securities and Exchange Commission (the “SEC”) filed an Amended Complaint on October 19, 2009 in Civil Action No. 09 Civ. 6829 (JSR) pending in the Southern District of New York alleging that BAC violated Section 14 of the Securities Exchange Act of 1934 (“Exchange Act”), and Rules 14a-3 and 14a-9 promulgated thereunder, as a result of its alleged failure to provide adequate disclosure of information concerning Merrill’s payment of year-end bonuses in connection with the proxy solicitation for the acquisition of Merrill (the “Bonus Case”);

3. The SEC subsequently filed a Complaint on January 12, 2010 in Civil Action No.10 Civ. 0215 (JSR) pending in the Southern District of New York alleging that BAC violated Section 14 of the Exchange Act and Rule 14a-9 thereunder as a result of its alleged failure to provide adequate disclosure of information concerning Merrill's interim and projected losses in the fourth quarter of 2008 in connection with the proxy solicitation for the acquisition of Merrill (the "Q4 Loss Case") (together with the Bonus Case, the "SEC Actions");

4. BAC has executed the Consent of Defendant Bank of America Corporation (the "Consent") for the purpose of settling the SEC Actions, and has consented to the entry of the Final Consent Judgment as to Defendant Bank of America Corporation (the "Final Consent Judgment");

5. In order to address the Attorney General's concerns, the Attorney General and BAC enter into the following Agreement:

GENERAL PROVISIONS

6. The parties have agreed to resolve the Attorney General's concerns by entering into this Agreement. They acknowledge that BAC is entering into this Agreement solely for the purposes of settlement and that nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, or of any other matters of fact or law, or of any liability or wrongdoing. No part of this Agreement shall constitute evidence of any liability, fault, or wrongdoing by BAC. This document and its contents are not intended for use by any third party for any purpose, including submission to any court for any purpose. It is the intent of the parties that this Agreement and any acts performed or documents executed in furtherance of this

Agreement shall not be admissible in other cases or binding on BAC in any respect other than in connection with the enforcement of this Agreement.

7. This Agreement shall not be construed or used as a waiver or limitation of any defense otherwise available to BAC in any action, or of BAC's right to defend itself from, or make any arguments in, any private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Agreement. No part of this Agreement shall create a private cause of action or confer any right to any third party for violation of any federal or state statute, law or rule.

8. The parties acknowledge that the SEC Actions involve allegations that are similar to the concerns addressed in the Attorney General's Investigation, and that BAC and the SEC will submit the proposed Final Consent Judgment to the United States District Court for the Southern District of New York for approval in the SEC Actions. The parties hereby agree and stipulate that this Agreement shall become effective only upon entry of an order by the United States District Court for the Southern District of New York approving the Final Consent Judgment in the SEC Actions (the "Effective Date") and the terms of this Agreement shall be amended and modified to conform to the terms addressing the same subject matter in the Final Consent Judgment as entered by the United States District Court for the Southern District of New York.

9. The Attorney General enters this Agreement pursuant to his authority under Chapter 114 of the General Statutes and finds that entry of this Agreement is in the public interest and reflects a negotiated agreement among the parties. Acceptance of this Agreement by the Attorney General shall not be construed as or deemed to be an approval of any of BAC's conduct that was a subject of the Investigation.

10. The Attorney General shall not institute any suit or proceeding against BAC, its current and former principals, directors, members, officers, representatives, agents, successors, and assigns, with respect to conduct occurring prior to the date of this Agreement, based on any of the subjects of the Investigation described in Paragraph 1 above. This Agreement does not affect the rights, if any, or the obligations, if any, that any individual or entity may have with respect to BAC.

ASSURANCES OF BAC

11. BAC shall, for the years ending December 31, 2010, 2011 and 2012, engage an independent individual or entity (“Independent Auditor”) to assess BAC’s disclosure controls and procedures (as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [17 C.F.R. § 240.13a-15(e)]) and to issue an attestation report, in a form acceptable to the SEC, based on its examination to obtain reasonable assurance on whether BAC’s conclusion regarding the effectiveness of such disclosure controls and procedures is fairly stated, in all material respects, based on criteria established in *Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)*. In performing its examination in accordance with applicable attestation standards, the Independent Auditor will consider elements of Auditing Standard No. 5 issued by the Public Company Accounting Oversight Board (governing attestations under Section 404 of the Sarbanes-Oxley Act of 2002) that the Independent Auditor deems relevant to its examination and in evaluating BAC’s conclusion based on COSO. The Independent Auditor shall, among other things: (i) inspect documentation of BAC’s disclosure controls and procedures in testing whether they are designed effectively; (ii) test whether such disclosure controls

and procedures have been implemented; (iii) test whether such disclosure controls and procedures are operating effectively; (iv) in testing the design and operating effectiveness of BAC's disclosure controls and procedures based on COSO, consider control environment elements, including, among others, the knowledge and skills of the employees and officers who are part of the disclosure controls, such as the members of BAC's Disclosure Committee, necessary to perform the roles in the disclosure controls and procedures that they have been assigned; and (v) based on the results of the Independent Auditor's procedures issue an attestation report expressing an opinion on BAC's assertion as to whether its disclosure controls and procedures as of the applicable year-end date are effective in recording, processing, summarizing, and reporting within the Company, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act, and that information is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. BAC shall provide the Independent Auditor's attestation report in its annual report to shareholders and in its reports on Form 10-K. BAC shall use its best efforts to retain the public accounting firm that audits the financial statements included in BAC's periodic reports to serve as the Independent Auditor. If, despite its best efforts, BAC is unable to retain the public accounting firm that audits its financial statements to serve as the Independent Auditor, BAC shall select an Independent Auditor in consultation with the staff of the SEC.

12. BAC shall, for a period of three (3) years after the Effective Date of this Agreement, with respect to each proxy statement filed pursuant to Section 14(a) of the

Exchange Act, include certifications substantially in the form specified in Item 601(b)(31)(i) of Regulation S-K [17 C.F.R. § 229.601(b)(31)(i)], and file or otherwise include such certifications as an appendix to such proxy statement. BAC shall require that its principal executive officer and principal financial officer, or persons performing similar functions at the time of the filing of the proxy statement, each sign such certification.

13. Within forty-five (45) days of the Effective Date of this Agreement, the Audit Committee of BAC's Board of Directors ("Audit Committee") shall retain disclosure counsel with expertise in disclosure issues ("Disclosure Counsel") for a period of three (3) years after entry of this Agreement. The Disclosure Counsel shall report solely to the Audit Committee. BAC shall require that the Disclosure Counsel: (i) review drafts of all of BAC's public disclosure statements, including all quarterly reports, annual reports, proxy statements, and current reports containing financial information; and (ii) confer, in executive session, with members of the Audit Committee at all regularly scheduled meetings of the Audit Committee, separate and apart from the non-independent members of BAC's Board of Directors, to discuss the adequacy of BAC's disclosures in its public disclosure statements. BAC shall also require that the Disclosure Counsel, for the period of engagement, not enter into, directly or indirectly, any other employment, consulting, or other professional relationship with BAC or its affiliates, directors, officers, employees, or agents without obtaining the consent of the staff of the SEC.

14. BAC shall adopt an independence requirement for members of the Compensation Committee of BAC's Board of Directors ("Compensation Committee")

according to the independence standards set forth in Section 10A(m)(3)(B) of the Exchange Act [15 U.S.C. §78j-1(m)(3)(B)]. Such independence standards shall require BAC to include as members of the Compensation Committee only those members who will not, directly or indirectly, accept any consulting, advisory or other compensatory fee from BAC or any affiliate or subsidiary of BAC, irrespective of the size or materiality of such fee, other than compensation in the member's capacity as a member of BAC's Board of Directors or be an affiliated person of BAC or any of BAC's subsidiaries. BAC shall maintain such a requirement for a period of three (3) years following the Effective Date of this Agreement.

15. BAC shall continue to retain, for a period of three (3) years after the Effective Date of this Agreement, a compensation consultant ("Compensation Consultant"). BAC shall require that the Compensation Consultant be engaged by, and report solely to, the Compensation Committee and that during the three (3) year period of engagement, the Compensation Consultant not enter into, directly or indirectly, any other employment, consulting, or other professional relationship with BAC or its affiliates, directors, officers, employees, or agents.

16. BAC shall, within thirty (30) days of the Effective Date of this Agreement, institute and implement formal, written incentive compensation principles and processes, and post such principles and processes in a prominent location on BAC's website at www.bankofamerica.com. For a period of three (3) years after the Effective Date of this Agreement, BAC shall maintain and comply with such written principles and processes as posted on BAC's website unless and until BAC informs its shareholders of any proposal to change such principles and processes, and provides for a separate advisory

shareholder vote regarding such proposed changes. Any such shareholder vote shall not be binding on the BAC Board of Directors and shall not be construed as overruling a decision by such Board, nor will it create or imply any additional fiduciary duty by such Board or be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

17. If during the three (3) years following the Effective Date of this Agreement BAC conducts an annual meeting of security holders (or a special meeting in lieu of an annual meeting) for which proxies will be solicited for the election of directors, BAC shall provide a separate advisory shareholder vote (“Vote”) regarding the compensation of executives, as disclosed pursuant to Item 402 of Regulation S-K [17 C.F.R. § 229.402], including the compensation discussion and analysis, the compensation tables, and any related materials. Any such Vote shall not be binding on the BAC Board of Directors and shall not be construed as overruling a decision by such Board, nor will it create or imply any additional fiduciary duty by such Board or be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

18. In the event that, after the Effective Date, the SEC or other regulatory agency or regulator (or legislation) provides for a new regulation or requirement that is applicable to BAC with respect to the same subject matter as is addressed by one or more of the remedial components of this Agreement, BAC shall consult with the staff of the SEC and the North Carolina Attorney General’s Office concerning the interaction of such new regulation or requirement and the remedial component provided for in this Agreement, and BAC or the Attorney General may propose to amend or modify any term

of this Agreement. The sole purpose for any such amendment or modification shall be to avoid a circumstance in which BAC may be subject to conflicting, overlapping or duplicative regulations or requirements in whole or in part, or remain subject to a term of this Agreement when the purpose thereof has been superseded or fulfilled by such a new regulation or requirement. This Agreement shall be amended or modified to conform with any change to the Final Consent Judgment, which change is approved by the United States District Court for the Southern District of New York in the SEC Actions (09 CIV 6829; 10 CIV 0215), in order to avoid a circumstance in which BAC may be subject to conflicting, overlapping or duplicative obligations under the Final Consent Judgment and this Agreement.

19. BAC shall comply with Section IX of the Final Consent Judgment in the SEC Actions that requires it to pay disgorgement of \$1 and a civil penalty of \$150,000,000, which is to be deposited in the federal Court Registry Investment System (“CRIS”) for distribution at a later date pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

20. No later than 30 days from the Effective Date, BAC shall pay a total of \$1,000,000 to the North Carolina Attorney General’s Office. Said payment shall be used by the North Carolina Attorney General’s Office for consumer protection purposes, including but not limited to consumer protection enforcement, litigation, consumer aid, defraying the costs of the Investigation leading to this settlement, for consumer education, or for other uses permitted by state law at the sole discretion of the North Carolina Attorney General. The parties acknowledge that the payment described herein is not a fine, penalty, or payment in lieu thereof. BAC shall make this payment via a

certified check payable to the “North Carolina Department of Justice.” The check shall be sent, within the deadline set forth above, to North Carolina Attorney General, c/o Kevin Anderson and Creecy Johnson, Assistant Attorneys General, Consumer Protection Division, 114 West Edenton Street, Raleigh, North Carolina, 27603.

21. In the event that the Attorney General has reason to believe that BAC may have violated the terms of this Agreement, BAC shall, upon request by the Attorney General, provide all documentation and information reasonably necessary for the Attorney General to verify compliance with this Agreement.

22. The parties agree that during the three-year term of paragraphs 11 through 17 of this Agreement, BAC shall maintain its internal audit process and the parties shall meet twice annually to discuss any allegations of a failure to perform the obligations of this Agreement that have been received by BAC through its internal audit process, including its established ethics hotline.

23. This Agreement is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the Attorney General may file an action to enforce the terms of this Agreement or terminate this Agreement in accordance with the terms set forth herein. For the purposes of resolving disputes with respect to compliance with this Agreement, if the Attorney General has a reasonable basis to believe that BAC has engaged in a material violation of a provision of this Agreement subsequent to the Effective Date of this Agreement, then the Attorney General shall notify BAC in writing of the specific violation, identify with particularity the provisions of this Agreement allegedly violated, and give BAC thirty days to respond to the notification. Upon receipt of written notice to BAC, BAC shall provide a good-

faith written response to the Attorney General's notification containing either a statement explaining why BAC believes it is in compliance with the Agreement or a detailed explanation of how the alleged violation occurred and a statement explaining how BAC intends to remedy the alleged breach. Unless the Attorney General provides written notice to BAC within thirty days of receipt of the response of BAC, the response shall be deemed sufficient and any violation shall be deemed cured thereby. Nothing in this paragraph shall be interpreted to limit the state's Civil Investigative Demand ("CID") or investigative subpoena authority to the extent such authority exists under applicable state law, and BAC reserves all of its rights with respect to a CID or investigative subpoena issued pursuant to such authority.

24. If the Attorney General provides timely notice that BAC's response is insufficient and BAC is in default of any material obligation under this Agreement, the Attorney General may commence an action to enforce this Agreement or may terminate this Agreement, at his sole discretion, upon ten days written notice to BAC.

Notwithstanding the provisions of Paragraph 23 and the preceding sentence of this Paragraph 24, in the event that the Attorney General believes that immediate action is needed to address an alleged violation of this Agreement, and that such action is in the public interest, the Attorney General may commence an action to enforce this Agreement or may terminate this Agreement, at his sole discretion, upon 48 hours notice to BAC.

BAC agrees that any statute of limitations or other time-related defenses applicable to the subjects of this Agreement and any claims arising from or relating thereto are tolled from and after the Effective Date. In the event of such termination, BAC expressly agrees and acknowledges that this Agreement shall in no way bar or otherwise preclude the Attorney

General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Agreement, against BAC, or from using in any way any statements, documents or other materials produced or provided by BAC prior to or after the date of this Agreement.

25. Subject to the terms of paragraphs 23 and 24 of this Agreement, the Attorney General may assert any claim that BAC has materially violated this Agreement in a separate civil action to enforce compliance with this Agreement, or may seek any other relief afforded by law after providing BAC with an opportunity to respond to the notification and notifying BAC that any proposed remedy of an alleged breach is unsatisfactory to the Attorney General as described in Paragraphs 23 and 24.

26. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Agreement by BAC has occurred, BAC shall pay to the Attorney General the cost, if any, of obtaining such determination and of enforcing this Agreement, including without limitation legal fees, expenses and court costs.

27. The parties agree and stipulate that the Courts of the State of North Carolina have personal jurisdiction over BAC in any dispute over this Agreement, and subject matter jurisdiction to enforce or modify this Agreement and to issue any orders, directions, or additional relief as may be necessary and appropriate for the enforcement of, or compliance with, this Agreement.

28. Nothing in this Agreement shall be construed as relieving BAC of the obligation to comply with all otherwise applicable state or federal laws, regulations or rules, or relieving BAC from any existing or future liability under applicable laws, or from legal claims not set forth in this Agreement or as limiting the ability of the Attorney

General or any other government entity from enforcing such provisions with respect to BAC within the State of North Carolina.

29. This Agreement represents the full and complete terms of the settlement entered into by the parties hereto. In any action undertaken by the parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

30. This Agreement may be executed in counterparts, and a facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

31. All Notices under this Agreement shall be provided to the following via Overnight Mail:

To Bank of America Corporation:

Michael Malloy
Associate General Counsel
Bank of America Corporation
101 South Tryon Street
NC1-002-29-01
Charlotte, NC 28225

With a copy to:

James P. McLoughlin, Jr.
Moore & Van Allen PLLC
Suite 4700
100 North Tryon Street
Charlotte, North Carolina 28202

To the Attorney General:

Kevin Anderson
Assistant Attorney General
N.C. Department of Justice
Consumer Protection Division
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602-0629

32. This Agreement may be modified only by a written instrument signed by or on behalf of the Attorney General and BAC. The parties further acknowledge that this Agreement constitutes a single or entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable by a court of law, the remaining provisions shall continue in full force and effect.

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING SETTLEMENT AGREEMENT.

Signed this the _____ day of February, 2010.

Bank of America Corporation

By:



Signature

General Counsel

Title

February 4, 2010

Date

Roy Cooper, Attorney General of North Carolina

Julie Brill, Senior Deputy Attorney General

Kevin Anderson
Assistant Attorney General

Crecy Johnson
Assistant Attorney General

Date

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING SETTLEMENT AGREEMENT.

Signed this the 4th day of February, 2010.

Bank of America Corporation

By:

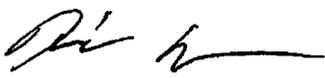
Signature

Title

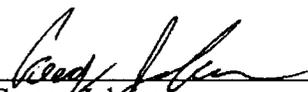
Date

Roy Cooper, Attorney General of North Carolina

Julie Brill, Senior Deputy Attorney General



Kevin Anderson
Assistant Attorney General



Creecy Johnson
Assistant Attorney General

2/4/10

Date