

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PENNSYLVANIA PUBLIC SCHOOL  
EMPLOYEES' RETIREMENT SYSTEM,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

BANK OF AMERICA CORPORATION, et al.,

Defendants.

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CIVIL ACTION NO.

11-CV-00733-WHP

CLASS ACTION

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the "Stipulation") is made and entered into by and between Lead Plaintiff Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS"), on behalf of itself and the Class, and Bank of America Corporation ("BoA"), Executive Defendants, Director Defendants, Underwriter Defendants and PricewaterhouseCoopers LLP.

**WHEREAS:**

A. Beginning on February 2, 2011, a number of class actions alleging violations of federal securities laws by Defendants were filed in this Court.

B. On June 20, 2011, the Court entered an order to consolidate the actions and refer to them collectively as *Pennsylvania Public School Employees' Retirement System v. Bank of America Corporation, et al.*, Civil Action No. 11 Civ. 00733-WHP. The order also appointed PSERS as Lead Plaintiff and Barrack, Rodos & Bacine as Lead Counsel.

C. On September 23, 2011, Lead Plaintiff filed the Consolidated Class Action Complaint (the “Complaint”), which alleged that Defendants violated Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (“1933 Act Claims”) and/or Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 (“1934 Act Claims”) and asserted claims on behalf of all persons or entities who purchased or otherwise acquired either BoA’s common stock or BoA’s Common Equivalent Securities during the Class Period, from February 27, 2009, through October 19, 2010, and who allegedly suffered damages as a result.

D. On January 11, 2012, Defendants moved to dismiss the Complaint. On February 15, 2012, Lead Plaintiff filed its opposition papers and, on March 2, 2012, Defendants filed reply papers. On March 28, 2012, the Court heard oral argument on Defendants’ motions, and on July 11, 2012, the Court issued a Memorandum and Order granting in part and denying in part Defendants’ motions to dismiss. The Court’s July 11, 2012 Order (1) denied BoA’s motion to dismiss the 1934 Act Claims asserted against BoA; (2) granted, without prejudice, the Executive Defendants’ motions to dismiss the 1934 Act Claims asserted against them; and (3) granted, with prejudice, all motions to dismiss the 1933 Act Claims asserted in the Complaint. As a consequence of the Court’s July 11, 2012 Order, all claims against the Director Defendants, the Underwriter Defendants and PwC were dismissed with prejudice.

E. On July 25, 2012, BoA moved for reconsideration of the Court’s July 11, 2012 Order to the extent it sustained Lead Plaintiff’s 1934 Act Claims or, in the alternative, to certify the Court’s decision for interlocutory review, pursuant to 28 U.S.C. §1292(b). On August 13, 2012, Lead Plaintiff filed its opposition memorandum, and also filed an amended consolidated class action complaint (the “Amended Complaint”). On August 23, 2012, BoA filed its reply memorandum in support of its motion for reconsideration or certification for interlocutory

appeal. On August 28, 2012, the Court denied BoA's motion for reconsideration or for certification for interlocutory appeal.

F. On November 5, 2012, Executive Defendants moved to dismiss the Amended Complaint. On November 21, 2012, BoA filed its answer to the Amended Complaint. BoA denied the claims and asserted a number of affirmative defenses. On December 12, 2012, Lead Plaintiff filed its opposition memorandum to the Executive Defendants' motion to dismiss the Amended Complaint. On December 21, 2012, Executive Defendants filed their reply memorandum in support of their motion to dismiss the Amended Complaint. Following oral argument, on April 17, 2013, the Court denied in part the Executive Defendants' motion to dismiss the Amended Complaint.

G. On May 1, 2013, Defendant Brian T. Moynihan moved for partial reconsideration of the Court's Order denying the Executive Defendants' motion to dismiss the Amended Complaint. On May 20, 2013, Lead Plaintiff filed its opposition memorandum to Mr. Moynihan's motion for reconsideration. On May 31, 2013, Mr. Moynihan filed his reply memorandum in support of his motion for reconsideration. On June 12, 2013, the Court denied Mr. Moynihan's motion for reconsideration.

H. On June 17, 2013, Executive Defendants filed their answers to the Amended Complaint. Executive Defendants denied the claims and asserted a number of affirmative defenses.

I. Fact discovery in the Action commenced in or around May 2013. During the course of fact discovery, the parties collectively produced more than 8 million pages of documents and conducted 34 fact depositions.

J. On July 30, 2013, the Court issued an Order concerning class certification which established a schedule for filing of materials with respect to the class certification motion and directed, *inter alia*, that the parties submit a joint report regarding the proposed class certification motion by October 31, 2013. Following the Court's July 30, 2013 Order, the parties conferred concerning the elimination or narrowing of issues relating to the class certification motion, and agreed that BoA and Executive Defendants, subject to reserving certain rights, would not contest the efficiency of the market for BoA common stock or Common Equivalent Securities during the Class Period, that the Class satisfies the numerosity and commonality requirements of Federal Rule of Civil Procedure 23(a), and the predominance and superiority requirements of Federal Rule of Civil Procedure 23(b)(3). On November 15, 2013, Lead Plaintiff moved for certification of a class of all persons or entities who purchased or otherwise acquired either BoA's common stock or Common Equivalent Securities during the class period of February 27, 2009 through October 19, 2010, and who allegedly suffered damages as a result (the "Class"). Excluded from the Class are: (i) BoA and Executive Defendants; (ii) members of the immediate family of each of the Executive Defendants; (iii) any person who was an executive officer and/or director of BoA during the Class Period; (iv) any entity that served as an underwriter for BoA's offering of Common Equivalent Securities; (v) any person, firm, trust, corporation, officer, director, or any other individual or entity in which BoA or any Executive Defendant has a controlling interest or that is affiliated with BoA or any Executive Defendant; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. Subsequent to the November 15, 2013 filing of Lead Plaintiff's class certification motion, on December 4, 2013, counsel for BoA and the Executive Defendants conducted the deposition of two designees of Lead Plaintiff and examined them concerning, *inter alia*, Lead Plaintiff's qualifications to

represent the class. On December 13, 2013, BoA and Executive Defendants filed a letter setting forth their reservation of certain rights and advising the Court and Lead Plaintiff, *inter alia*, that “at this time, Defendants do not intend to contest that PSERS’s ‘claims or defenses ... are typical of the claims or defenses of the class’ and that PSERS can ‘fairly and adequately protect the interests of the class.’” Subsequently, the parties filed a Stipulation to the certification of the Class, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), and on February 14, 2014, the Court issued an Order approving that Stipulation and certifying the Class sought by PSERS in its motion, certifying PSERS as the Class Representative, and appointing PSERS’s counsel, Barrack, Rodos & Bacine, as Class Counsel under Federal Rule of Civil Procedure 23(g), all subject to the parties’ reservation of their rights to move to alter or amend the Court’s Order certifying the Class pending final judgment in this action pursuant to Federal Rule of Civil Procedure 23(c)(1)(C).

K. In or about April, 2014, Lead Plaintiff and BoA agreed to a mediation of the Action before the Honorable Layn R. Phillips, a former federal district court judge in the United States District Court for the Western District of Oklahoma. In advance of the mediation, Lead Plaintiff and BoA made several detailed submissions to Judge Phillips. On October 2, 2014, Judge Phillips conducted a mediation session in New York City attended by representatives of Lead Plaintiff and BoA and their respective counsel. This mediation did not result in an agreement to resolve the Action. Another mediation before Judge Phillips was held on February 27, 2015. In advance of this mediation, Lead Plaintiff and BoA made further written submissions to Judge Phillips. This mediation also did not result in an agreement to resolve the Action. A third mediation was held before Judge Phillips on August 12, 2015. In advance of this mediation, Lead Plaintiff and BoA made further written submissions to Judge Phillips.

L. At the conclusion of the mediation session on August 12, 2015, counsel for BoA and Lead Counsel, on behalf of their respective clients, accepted a mediator's proposal from Judge Phillips to settle and release all claims asserted in the Action in return for a cash payment by BoA of \$335,000,000.00 for the benefit of the Class, subject to the execution of this Stipulation and related papers, and approval of the proposed settlement by the Court.

**NOW THEREFORE**, without any concession as to the merits of any Released Claim or any defenses thereto, it is hereby **STIPULATED AND AGREED**, subject to approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that in consideration of the benefits flowing to the Settling Parties, all Released Claims as against all Released Parties shall be fully, finally, and forever settled, released, discharged, and dismissed with prejudice, and without costs, as follows:

#### **DEFINITIONS**

1. As used in this Stipulation and its exhibits, the following terms shall have the meanings set forth below. In the event of any inconsistency between any definition set forth below and any definition in any other document related to the Settlement, the definition set forth below shall control.

(a) "Action" means all litigation conducted under the caption *Pennsylvania Public School Employees' Retirement System v. Bank of America Corporation, et al.*, No. 11 Civ. 00733 (WHP), pending in the United States District Court for the Southern District of New York before the Honorable William H. Pauley, III, and any of the constituent actions consolidated into the referenced caption.

(b) “Authorized Claimant” means a Class Member that timely submits a valid Proof of Claim and Release form to the Claims Administrator under the terms of this Stipulation that is accepted for payment by the Court.

(c) “BoA” means Bank of America Corporation.

(d) “Claims Administrator” means the firm designated by Lead Counsel, following consultation with and agreement by Lead Plaintiff, subject to Court approval, to provide all notices approved by the Court to Class Members, to process Proofs of Claim, and to administer the Settlement.

(e) “Class” or “Class Member” means the class certified in this case, namely all Persons “who purchased or otherwise acquired either BoA’s common stock or Common Equivalent Securities during the Class Period of February 27, 2009, through October 19, 2010, and who allegedly suffered damages as a result”. Excluded from the Class are: (i) BoA and Executive Defendants; (ii) members of the immediate family of each of the Executive Defendants; (iii) any person who was an executive officer and/or director of BoA during the Class Period; (iv) any entity that served as an underwriter for BoA’s offering of Common Equivalent Securities; (v) any person, firm, trust, corporation, officer, director, or any other individual or entity in which any Defendant has a controlling interest or that is affiliated with any of the Defendants; (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party; and (vii) any Person that would otherwise be a Class Member, but properly excludes himself, herself, or itself by submitting a valid and timely request for exclusion from the Class in accordance with the requirements set forth herein and in the Notice. For the sake of clarity, the exclusions from the Class do not include Investment Vehicles.

(f) “Class Period” means the period from and including February 27, 2009 through and including October 19, 2010.

(g) “Court” means the United States District Court for the Southern District of New York.

(h) “Defendants” means Bank of America Corporation, Kenneth D. Lewis, Brian T. Moynihan, Charles H. Noski, Joe L. Price, Neil Cotty, William P. Boardman, Frank Paul Bramble, Sr., Virgis William Colbert, Charles K. Gifford, Jr., Charles Otis Holliday, Jr., Monica C. Lozano, Thomas John May, Thomas Michael Ryan, Robert W. Scully, Cantor Fitzgerald & Co., CCB International Capital Ltd., Cowen and Company, L.L.C., Daiwa Capital Markets America Inc. (formerly Daiwa Securities America Inc.), Deutsche Bank Securities Inc., Gleacher & Company Securities, Inc. (formerly Broadpoint Capital, Inc.), Goldman, Sachs & Co., ICBC International Securities Ltd., Keefe, Bruyette & Woods, Inc., KeyBanc Capital Markets Inc., Macquarie Capital (USA) Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Mizuho Securities USA Inc., Morgan Stanley & Co. LLC (formerly Morgan Stanley & Co., Incorporated), National Australia Bank Limited, RBS Securities Inc., SG Americas Securities, LLC, Samsung Securities Co., Ltd., Samuel A. Ramirez & Co., Inc., Sanford C. Bernstein & Co., LLC, Santander Investment Securities Inc., Southwest Securities Inc., Stifel, Nicolaus & Company, Incorporated, SunTrust Robinson Humphrey, Inc., UBS Securities LLC, UniCredit Capital Markets, Inc., Wells Fargo Securities, LLC, and PricewaterhouseCoopers LLP.

(i) “Defense Counsel” means the law firms of Skadden, Arps, Meagher, Slate & Flom, LLP, DLA Piper LLP (US), Dechert LLP, Davis Polk & Wardwell LLP, Debevoise &



Plimpton LLP, Baker Botts L.L.P., King & Spalding LLP, and Wilmer Cutler Pickering Hale and Dorr LLP.

(j) “Director” means any member of any board of directors.

(k) “Director Defendants” means William P. Boardman, Frank Paul Bramble, Sr., Virgis William Colbert, Charles K. Gifford, Jr., Charles Otis Holliday, Jr., Monica C. Lozano, Thomas John May, Thomas Michael Ryan and Robert W. Scully.

(l) “Distribution Order” means an order of the Court approving the Claims Administrator’s determinations concerning the acceptance and rejection of submitted claims and approving any fees and expenses not previously paid, including the fees and expenses of the Claims Administrator and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

(m) “Effective Date” means the date upon which the Settlement shall become effective, as set forth in Paragraph 41 below.

(n) “Escrow Account” means one or more separate interest-bearing escrow account(s) maintained by the Escrow Agent(s) into which the Settlement Amount will be deposited for the benefit of the Class.

(o) “Escrow Agent” means the financial institution(s) designated by Lead Counsel to receive, hold, invest, and disburse the Settlement Amount under the terms of this Stipulation.

(p) “Executive Defendants” means Kenneth D. Lewis, Brian T. Moynihan, Charles H. Noski, Joe L. Price, and Neil Cotty.

(q) “Fee and Expense Application” means Lead Counsel’s application for an award from the Settlement Fund of attorneys’ fees and reimbursement of litigation expenses

incurred in prosecuting the Action in an amount not to exceed the attorneys' fees and expense reimbursement disclosure contained in the Notice, including any application for an award to Lead Plaintiff for reasonable costs and expenses (including lost wages) pursuant to the PSLRA.

(r) "Final," with respect to a court order, means the latest of (i) if there is a timely appeal from that court order, the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration, or a petition for a writ of certiorari and, if certiorari is granted, the date of final affirmance of the order following review under the grant; (ii) the date of final dismissal of any appeal from the order or the final dismissal of any proceeding on certiorari to review the order; or (iii) the expiration of the time for the filing or noticing of any appeal or petition for certiorari from the order (or, if the date for taking an appeal or seeking review of the order shall be extended beyond this time by order of the issuing court, by operation of law or otherwise, or if such extension is requested, the date of expiration of any extension if any appeal or review is not sought). No appeal or proceeding seeking subsequent judicial review pertaining solely to the Plan of Allocation of the Net Settlement Fund, or to the Court's award of attorneys' fees and expenses, including any award to Lead Plaintiff for reasonable costs and expenses (including lost wages) pursuant to the PSLRA, shall in any way delay or affect the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.

(s) "Immediate Family" or "Immediate Families" means, as set forth in 17 C.F.R. § 229.404, children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. "Spouse" as used in this definition also means a husband, a wife, or a partner in a legally-recognized domestic partnership, civil union, or marriage.

(t) “Investment Vehicles” means any investment company or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which a Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but of which a Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest, and (ii) any Employee Benefit Plan as to which a Defendant or its affiliates acts as an investment advisor or otherwise may be a fiduciary.

(u) “Judgment” means the proposed judgment and order (i) finally approving the Settlement; and (ii) dismissing the Action with prejudice, substantially in the form attached as Exhibit 5.

(v) “Lead Counsel” means the law firm of Barrack, Rodos & Bacine.

(w) “Lead Plaintiff” means the Commonwealth of Pennsylvania, Public School Employees’ Retirement System.

(x) “Net Settlement Fund” means the Settlement Fund less: (i) Court-awarded attorneys’ fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court, including any award to Lead Plaintiff for reasonable costs and expenses (including lost wages) pursuant to the PSLRA.

(y) “Notice” means the Notice of Class Action, Proposed Settlement, Motion for Attorneys’ Fees and Expenses, and Settlement Hearing, which, subject to approval of the Court, will be sent to Class Members substantially in the form attached hereto as Exhibit 1.

(z) “Notice and Administration Expenses” means all costs, fees, and expenses incurred in connection with providing notice to the Class and the administration of the Settlement, including but not limited to: (i) providing notice of the proposed Settlement by mail,

publication, or other means to Class Members; (ii) receiving and reviewing claims; (iii) applying the Plan of Allocation; (iv) communicating with Persons regarding the proposed Settlement and claims administration process; (v) distributing the proceeds of the Settlement; and (vi) fees related to the Escrow Account and investment of the Settlement Fund.

(aa) “Officer” means any officer as the term Officer is defined in 17 C.F.R. § 240.16a-1(f).

(bb) “Person” or “Persons” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, as well as each of their spouses, partners in a state-recognized domestic partnership, civil union, or marriage, heirs, predecessors, successors, representatives, agents, trustees, estates, administrators, executors, or assignees.

(cc) “Plan of Allocation” means the proposed Plan of Allocation of Net Settlement Fund, which, subject to the approval of the Court, shall be substantially in the form described in the Notice.

(dd) “Preliminary Approval Order” means the proposed order to be entered by the Court for settlement purposes only, preliminarily approving the Settlement, scheduling a Settlement hearing date, and directing notice thereof to the Class, which, subject to the approval of the Court, shall be substantially in the form attached hereto as Exhibit 4.

(ee) “Proof of Claim” means the Proof of Claim and Release form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached as Exhibit 3.

(ff) “PSERS” means the Commonwealth of Pennsylvania, Public School Employees’ Retirement System.

(gg) “PSLRA” means the Private Securities Litigation Reform Act of 1995, as amended.

(hh) “PwC” means PricewaterhouseCoopers LLP.

(ii) “Released Claims” means Released Plaintiff Claims and Released Defendant Claims.

(jj) “Released Defendants” means any of the following: (a) Defendants; (b) their respective present and former parents, affiliates, subsidiaries, divisions, general partners, limited partners, limited liability partners, and any Person in which any Defendant has or had a controlling interest; (c) the present and former Immediate Family, heirs, principals, owners, trustees, trusts, executors, administrators, predecessors, successors, assigns, members, agents, subsidiaries, employees, associates, Officers, managers, Directors, general partners, limited partners, bankers, underwriters, attorneys, accountants, auditors, representatives, estates, divisions, advisors, estate managers, indemnifiers, insurers, and reinsurers of each of the Persons listed in subpart (a) or (b) of this definition. “Released Defendants” shall also include any entity or partnership (whether or not incorporated) which carries on business under a name which includes all or part of the PricewaterhouseCoopers name or is otherwise (directly or indirectly) within the worldwide network of PricewaterhouseCoopers firms, including PricewaterhouseCoopers International Limited and any member firm, network firm, specified subsidiary or connected firm of PricewaterhouseCoopers International Limited.

(kk) “Released Defendant Claims” means any and all claims, rights, actions, issues, controversies, causes of action, duties, obligations, demands, actions, debts, sums of

money, suits, contracts, agreements, promises, damages, and liabilities of every kind, nature, and description (including but not limited to any claims for damages, interest, attorneys' fees or expert or consulting fees, and any and all other costs, expenses or liabilities whatsoever), including both known claims and Unknown Claims (as defined below), whether arising under federal, state, or foreign law, or statutory, common, or administrative law, or any other law, rule, or regulation, whether asserted as claims, cross-claims, counterclaims, or third-party claims, whether fixed or contingent, choate or inchoate, accrued or not accrued, matured or unmatured, liquidated or unliquidated, perfected or unperfected, whether class or individual in nature, that previously existed, currently exist, or that exist as of the date of the Court approval of the Settlement or that may arise in the future, that any of the Releasing Defendants could have asserted in the Action or any other action or in any forum (including, without limitation, any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere) against any of the Released Plaintiffs that arise out of or relate to the institution, maintenance, prosecution, or settlement of the Action (other than claims to enforce the Settlement or the Judgment). Released Defendants Claims also include but are not limited to any claim under Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, or any rule, regulation, statute, contract, judicial opinion, common law or other legal or equitable principle that could be asserted at any time against Lead Plaintiff or its counsel, including counsel's employees and agents, concerning in any way whatsoever the institution, maintenance, prosecution, or settlement of this Action, including any factual allegations or legal assertions made herein. Released Defendant Claims do not include claims: (i) to enforce the Settlement; or (ii) for indemnification, advancement or contribution among or between Released Defendants.

(ll) “Released Parties” means Released Defendants and Released Plaintiffs.

(mm) “Released Plaintiffs” or “Releasing Plaintiffs” means each and all of the following: (a) Lead Plaintiff, Lead Counsel, including counsel’s employees and agents, and each and every Class Member (regardless of whether that Person actually submits a Proof of Claim, seeks or obtains a distribution from the Net Settlement Fund, is entitled to receive a distribution under the Plan of Allocation approved by the Court, or has objected to the Settlement, the Plan of Allocation, or the Fee and Expense Application); (b) to the extent of the foregoing Persons’ authority, their respective present and former parents, affiliates, subsidiaries, divisions, general partners, limited partners, employees, agents, and any Person in which any of the foregoing Persons listed in subpart (a) has or had a controlling interest; (c) to the extent of the foregoing Persons’ authority, the present and former Immediate Family, heirs, principals, trustees, trusts, executors, administrators, predecessors, successors, assigns, members, agents, subsidiaries, employees, Officers, managers, Directors, general partners, limited partners, bankers, attorneys, accountants, auditors, representatives, estates, divisions, advisors, estate managers, insurers, and reinsurers of each of the Persons listed in subpart (a) or (b) of this definition; and (d) any other Person who has the right, ability, standing, or capacity to assert, prosecute, or maintain on behalf of any Class Member any of the Released Plaintiff Claims (or to obtain the proceeds of any recovery therefrom), whether in whole or in part.

(nn) “Released Plaintiff Claims” means any and all claims, rights, actions, issues, controversies, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every kind, nature, and description (including but not limited to any claims for damages, interest, attorneys’ fees or expert or consulting fees, and any and all other costs, expenses or liabilities whatsoever),

including both known claims and Unknown Claims (defined in Paragraph 5 below), whether arising under federal, state, or foreign law, or statutory, common, or administrative law, or any other law, rule, or regulation, whether asserted as claims, cross-claims, counterclaims, or third-party claims, whether fixed or contingent, choate or inchoate, accrued or not accrued, matured or unmatured, liquidated or unliquidated, perfected or unperfected, whether class or individual in nature, that previously existed, currently exist, or that exist as of the date of the Court approval of the Settlement or that may arise in the future, that any Releasing Plaintiffs asserted or could have asserted against Released Defendants in the Action or any other action or in any forum (including, without limitation, any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere) that (i) in any way arise out of, are based upon, relate to, or concern the claims, allegations, transactions, facts, events, acts, disclosures, statements, representations, or omissions or failures to act alleged, set forth, referred to, or involved in the Action, (ii) could have been raised in the Action or any of the complaints filed or proposed to be filed therein, or (iii) in any way arise out of, are based upon, relate to, or concern the holding, ownership, purchase, acquisition, disposition, or sale of, or other transaction in BoA common stock or BoA Common Equivalent Securities during the Class Period, or the holding, ownership, purchase, acquisition, disposition, or sale of, or other transaction in BoA common stock or BoA Common Equivalent Securities in or traceable to an offering during the Class Period, including, without limitation, claims that arise out of or relate to any disclosures, SEC filings, press releases, investor calls, registration statements, offering memoranda, web postings, presentations or any other statements or omissions by BoA or any Defendants during the Class Period. Released Plaintiff Claims also include but not are limited to any claim under Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, or any rule,



regulation, statute, contract, judicial opinion, common law or other legal or equitable principle that could be asserted at any time against Defendants or their counsel, including counsel's employees and agents, concerning in any way whatsoever the defense or settlement of this Action, including any factual allegations or legal assertions made herein. Released Plaintiff Claims do not include claims to enforce the Settlement.

(oo) "Releasing Defendants" means any of the following: (a) Defendants; (b) to the extent of Defendants' authority, their respective present and former parents, affiliates, subsidiaries, divisions, general partners, limited partners, limited liability partners, and any Person in which any Defendant has or had a controlling interest; and (c) to the extent of Defendants' authority, the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives and assigns of each of them, in their capacity as such.

(pp) "Releasing Parties" means Releasing Defendants and Releasing Plaintiffs.

(qq) "Settlement" means the resolution of the Action in accordance with the terms and provisions of this Stipulation.

(rr) "Settlement Amount" means the total principal amount of three hundred thirty-five million dollars (\$335,000,000.00) in cash. Under no circumstances shall the total that BoA pays under this Stipulation exceed the Settlement Amount.

(ss) "Settlement Fund" means the Settlement Amount deposited in the Escrow Account under the terms of this Stipulation and any interest or other earnings accrued thereon pursuant to Paragraph 8.

(tt) "Settlement Hearing" means the final hearing to be held by the Court to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be approved.

(uu) “Settling Parties” means Settling Plaintiffs and Defendants.

(vv) “Settling Plaintiffs” means PSERS, on behalf of itself and the other Class Members.

(ww) “Stipulation” means this Stipulation and Agreement of Settlement.

(xx) “Summary Notice” means the Summary Notice of Class Action, Proposed Settlement, Motion for Attorneys’ Fees and Expenses, and Settlement Hearing to be published in the *Wall Street Journal* and transmitted over *PR Newswire*, that, subject to the approval of the Court, shall be substantially in the form attached as Exhibit 2.

(yy) “Taxes” means all federal, state, or local taxes of any kind on any income earned by or imposed on payments of the Settlement Fund, including withholding taxes, and reasonable expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties, and the reasonable expenses of tax attorneys and accountants).

(zz) “Underwriter Defendants” means Cantor Fitzgerald & Co., CCB International Capital Ltd., Cowen and Company, L.L.C., Daiwa Capital Markets America Inc. (formerly Daiwa Securities America Inc.), Deutsche Bank Securities Inc., Gleacher & Company Securities, Inc. (formerly Broadpoint Capital, Inc.), Goldman, Sachs & Co., ICBC International Securities Ltd., Keefe, Bruyette & Woods, Inc., KeyBanc Capital Markets Inc., Macquarie Capital (USA) Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Mizuho Securities USA Inc., Morgan Stanley & Co. LLC (formerly Morgan Stanley & Co., Incorporated), National Australia Bank Limited, RBS Securities Inc., SG Americas Securities, LLC, Samsung Securities Co., Ltd., Samuel A. Ramirez & Co., Inc., Sanford C. Bernstein & Co., LLC, Santander Investment Securities Inc., Southwest Securities Inc., Stifel, Nicolaus & Company, Incorporated,

SunTrust Robinson Humphrey, Inc., UBS Securities LLC, UniCredit Capital Markets, Inc., and Wells Fargo Securities, LLC.

## **RELEASES**

2. Subject to approval by the Court, and such approval becoming Final, the obligations incurred pursuant to this Stipulation are in full and final disposition of all Released Claims.

3. By operation of the Judgment, upon the Effective Date, the Releasing Plaintiffs (i) have and shall be deemed to have fully, finally, and forever waived, released, relinquished, discharged, and dismissed each and every one of the Released Plaintiff Claims against each and every one of the Released Defendants; (ii) have and be deemed to have covenanted not to sue, directly, indirectly, or derivatively, any Released Defendant with respect to any and all of the Released Plaintiff Claims; and (iii) shall forever be barred and enjoined from directly, indirectly, or derivatively filing, commencing, instituting, prosecuting, maintaining, intervening in, participating in (as a Class Member or otherwise) (except as a witness compelled by subpoena or court order), or receiving any benefits or other relief, from any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative capacity, that is based upon, arises out of, or relates to any of the Released Plaintiff Claims against any of the Released Defendants or any other Person who may seek to claim any form of contribution or indemnity from any Released Party. All Releasing Plaintiffs shall be bound by the terms of the releases set forth in this Stipulation whether or not they submit a valid and timely Proof of Claim, take any other action to obtain recovery from the Settlement Fund, or seek, or actually receive a distribution from the Net Settlement Fund.

4. By operation of the Judgment, upon the Effective Date, the Releasing Defendants shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendant Claims against each and every one of the Released Plaintiffs and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any of the Released Defendant Claims against any of the Released Plaintiffs.

5. The Released Claims include any and all claims that any or all of the Releasing Parties do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including, with respect to Lead Plaintiff or any other Class Member, the decision to exclude himself, herself, or itself from the Class, or to object or not to object to the Settlement (collectively, including as described in the remainder of this paragraph, “Unknown Claims”). The Released Claims shall also include any claim under Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927 or any other rule, regulation, statute, contract, judicial opinion, common law or other legal or equitable principle that could be asserted at any time against Released Parties, their counsel, or their counsel’s employees or agents, concerning in any way whatsoever the institution, maintenance, prosecution, or defense of this litigation, including any factual allegations or legal assertions made herein. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, each Releasing Party shall be deemed to have, and by operation of the Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or

principle of common law or equity, which is, or is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties acknowledge that a Releasing Party may hereafter discover facts, legal theories, or authorities in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but that the Settling Parties nevertheless intend to and shall expressly, fully, finally, and forever settle and release, and upon the Effective Date and by operation of the Judgment each other Releasing Party shall be deemed to have, and shall have, settled and released, fully, finally, and forever, any and all Released Claims as applicable, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which have existed now or will exist, upon any theory of law or equity, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Settling Parties acknowledge, and each other Releasing Party by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Plaintiff Claims and Released Defendant Claims was separately bargained for and was a material and essential element of the Settlement.

#### **THE SETTLEMENT CONSIDERATION**

6. In full settlement of the Released Plaintiff Claims and in consideration of the releases above, BoA shall pay, or cause to be paid, the Settlement Amount, into the Escrow Account on or before fifteen (15) calendar days after (i) the Court has entered the Preliminary

Approval Order and (ii) Lead Counsel has provided to BoA all information necessary to effectuate a transfer of funds, including but not limited to, wiring instructions, payment address, and a complete, accurate, and signed W-9 form for the Settlement Fund that reflects a valid taxpayer identification number. No Defendant other than BoA shall have any responsibility for, or any liability whatsoever with respect to, the payment of the Settlement Amount. Releasing Plaintiffs shall have no recourse against any Defendant other than BoA for payment of the Settlement Amount.

7. The Settlement Amount represents the entirety of the Released Defendants' financial obligations under this Stipulation and in connection with this Settlement, meaning that it includes all attorneys' fees and expenses, Notice and Administration Expenses, Taxes, and costs of any kind whatsoever associated with the Settlement. The payment of the Settlement Amount into the Escrow Account by BoA in accordance with Paragraph 6 above fully discharges the Released Defendants' financial obligations (if any) under this Stipulation and in connection with the Settlement. No Released Defendant other than BoA shall have any obligation to make or cause to be made any payment into the Escrow Account or to any Class Member, or any other Person, under this Stipulation or as part of the Settlement. For the avoidance of doubt, under no circumstances shall the total to be paid or caused to be paid by or on behalf of Released Defendants under this Stipulation exceed the Settlement Amount.

#### **USE AND TAX TREATMENT OF SETTLEMENT CONSIDERATION**

8. All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be disbursed or returned, pursuant to the terms of this Stipulation or further order of the Court. The Escrow Agent shall invest funds in the Escrow Account in instruments backed by the full

faith and credit of the United States Government (or a mutual fund invested solely in such instruments), or deposit some or all of the funds in non-interest bearing transaction account(s) that are fully insured by the Federal Deposit Insurance Corporation (“FDIC”) in amounts that are up to the limit of FDIC insurance, and shall collect and reinvest all interest accrued thereon in the same instruments. The Released Defendants and Defense Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent.

9. The Settlement Fund shall be applied as follows and only as follows: (i) to pay any attorneys’ fees and expenses awarded by the Court; (ii) to pay Notice and Administration Expenses; (iii) to pay any Taxes; (iv) to pay any other costs, fees, or expenses approved by the Court, including any award to Lead Plaintiff for reasonable costs and expenses under the PSLRA; and (v) to pay into the Net Settlement Fund for Authorized Claimants.

10. The Net Settlement Fund shall be distributed to Authorized Claimants as provided in Paragraphs 15-18 hereof. The Net Settlement Fund shall remain in the Escrow Account until the Effective Date unless the Stipulation is terminated under the provisions of this Stipulation or the Settlement is not approved.

11. Lead Plaintiff intends to structure the Settlement Fund as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1. Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the sole responsibility of Lead Counsel to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary

documentation for signature by all necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing(s) to occur.

(a) For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B promulgated thereunder, the “administrator” shall be Lead Counsel or its successor(s), who shall be solely responsible for timely and properly filing, or causing to be filed, all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the funds deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Those tax returns (as well as the election described above) shall be consistent with this subparagraph and in all events shall reflect that all Taxes (including any estimated Taxes, earnings, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of those funds as provided in subparagraph (c) of this Paragraph.

(b) All Taxes shall be paid by the Escrow Agent solely out of the Settlement Fund. In all events, Released Defendants and Defense Counsel shall have no liability or responsibility whatsoever for the Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. If any Taxes of any kind whatsoever, including, but not limited to, any Taxes payable by reason of indemnification, are owed by any of the Released Defendants on any earnings on the funds on deposit in the Escrow Account, those amounts shall also be paid out of the Settlement Fund. The Released Defendants shall notify Lead Counsel promptly if they receive any notice of any claim for Taxes related to the Settlement Fund.

(c) Taxes shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by the Escrow Agent out of the



Settlement Fund without prior order from the Court or approval by any Party, and the Escrow Agent and the Claims Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(1)(2)).

(d) Authorized Claimants shall provide any and all information that the Claims Administrator may reasonably require or that is required by applicable law regarding Taxes and filings and reporting for Taxes, before any distributions are made to Authorized Claimants as contemplated hereby, and the Claims Administrator may, without liability to the Authorized Claimants, delay those distributions unless and until such information is provided in substantially the form required by the Claims Administrator.

12. The Released Defendants and Defense Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Lead Counsel, the Escrow Agent, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation or its implementation, administration, or interpretation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

### **ADMINISTRATION EXPENSES**

13. Except as otherwise provided herein, the Settlement Fund shall be held in the Escrow Account until the Effective Date.

14. Before the Effective Date, without further approval from any party or further order of the Court, Lead Counsel may expend up to \$15 million from the Settlement Fund to pay Notice and Administration Expenses actually and reasonably incurred. Taxes and fees related to the Escrow Account and investment of the Settlement Fund may be paid as incurred, without further approval from any party or further order of the Court. After the Effective Date, without further approval from any party or further order of the Court, Notice and Administration Expenses may be paid as incurred.

### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

15. Lead Counsel will apply to the Court for a Distribution Order, on notice to Defense Counsel, approving the Claims Administrator's determinations concerning the acceptance and rejection of the claims submitted pursuant to this Stipulation, and, if the Effective Date has occurred, directing the payment of the Net Settlement Fund to Authorized Claimants.

16. The Claims Administrator shall administer the Settlement under Lead Counsel's supervision in accordance with the terms of this Stipulation and subject to the jurisdiction of the Court.

17. The allocation and distribution of the Net Settlement Fund to Class Members shall be subject to the Plan of Allocation, which Lead Plaintiff shall propose, subject to notice to the Class Members and approval by the Court. Except for payment of the Settlement Amount by BoA as set forth in Paragraph 6, Released Defendants and Defense Counsel shall have no responsibility for, interest in, obligation, or liability whatsoever with respect to the

administration of the Settlement, the actions or decisions of the Claims Administrator, the Plan of Allocation or other allocation of the Net Settlement Fund, reviewing or challenging claims, the Distribution Order or distribution of the Net Settlement Fund.

18. The Claims Administrator shall determine each Authorized Claimant's pro rata share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Loss, as defined in the Plan of Allocation included in the Notice, or in such other plan of allocation as the Court may approve.

19. Defendants will take no position with respect to the Plan of Allocation. Any proceeding or decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of this Stipulation or the Settlement. The Plan of Allocation is not a necessary term of this Stipulation, the Settlement, the Preliminary Approval Order, or the Judgment, and it is not a condition of this Stipulation or the Settlement that any particular plan of allocation be approved by the Court or any appellate court. Neither Lead Plaintiff, whether on its own behalf or on behalf of the Class, nor Lead Counsel may cancel or terminate this Stipulation or the Settlement (whether pursuant to the provisions of this Stipulation or otherwise) based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in the Action. The Released Defendants and Defense Counsel shall have no responsibility for, and no liability whatsoever with respect to, reviewing or challenging claims, allocating of the Net Settlement Fund, or distributing the Net Settlement Fund.

#### **ATTORNEYS' FEES AND EXPENSES**

20. Consistent with the terms in Lead Plaintiff's retention agreement with Lead Counsel, Lead Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees and reimbursement of litigation expenses incurred in prosecuting the Action in an

amount not to exceed the attorneys' fees and expense reimbursement disclosure contained in the Notice, plus any earnings on such amounts at the same rate and for the same periods as earned by the Settlement Fund. The Settlement Fund shall be the sole source of payment for the award of attorneys' fees and litigation expenses ordered by the Court. Defendants will take no position with respect to the Fee and Expense Application.

21. The amount of attorneys' fees and litigation expenses awarded by the Court is within the sole control of the Court. Any attorneys' fees and litigation expenses awarded by the Court shall be paid from the Settlement Fund to Lead Counsel upon an order awarding such attorneys' fees and litigation expenses.

22. Any payment of attorneys' fees and litigation expenses pursuant to Paragraphs 20-21 above shall be subject to Lead Counsel's obligation to make refunds or repayments to the Settlement Fund of any paid amounts, plus accrued earnings at the same net rate and for the same periods as is earned by the Settlement Fund, if: (a) as a result of any appeal or further proceedings on remand or successful collateral attack, the fee, expense or cost award is reduced, vacated, or reversed; (b) this Stipulation is terminated or cancelled for any reason; or (c) the Settlement is not approved or is reversed or modified by any court.

23. If one or more of the events set forth Paragraph 22 occurs, Lead Counsel shall repay the full amount of attorneys' fees and the litigation expenses award that is reversed or vacated (or, as applicable, the amount by which any award of attorneys' fees and litigation expenses is reduced or modified), plus accrued earnings at the same net rate as is earned by the Settlement Fund, no later than thirty (30) calendar days after receiving notice of the events in Paragraph 22, including, as applicable, notice of any reduction, vacatur, or reversal of the award of attorneys' fees and litigation expenses, of termination or cancellation of this Stipulation, or of

the Court's Final refusal to approve the Settlement, or reversing or modifying the Settlement, by Final non-appealable court order. It shall be the responsibility and obligation of Lead Counsel (or its successor) to ensure repayment under this Paragraph, and Lead Counsel (or its successor) submits itself to the jurisdiction of the Court in the event of any dispute in connection with this Paragraph.

24. With the sole exception of BoA's causing the payment of the Settlement Amount into the Escrow Account as provided for in Paragraph 6 above, the Released Defendants shall have no responsibility for, and no liability whatsoever with respect to, any payment whatsoever to Lead Counsel in the Action. Releasing Plaintiffs shall have no recourse against the Released Defendants for the payment of any attorneys' fees or litigation expenses.

25. Any proceeding or decision by the Court concerning the Fee and Expense Application shall not affect the validity or finality of this Stipulation or the Settlement. The Fee and Expense Application and the payment of attorneys' fees or litigation expenses is not a necessary term of this Stipulation, the Settlement, the Preliminary Approval Order, or the Judgment, and it is not a condition of this Stipulation or the Settlement that any particular award of attorneys' fees or litigation expenses be approved by the Court or any appellate court. Any order or proceeding relating to any Fee and Expense Application, including an award of attorneys' fees, costs, or expenses in an amount less than the amount requested by Lead Counsel, or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate, cancel, or affect the enforceability of this Stipulation or the Settlement, impose any obligation on the Released Defendants or any other Person to increase the consideration paid in connection with the Settlement, or affect or delay either the Effective Date or the finality of the Judgment approving the Settlement set forth herein, including, but not

limited to, the release, discharge, and relinquishment of the Released Plaintiff Claims against the Released Defendants, or any other orders entered relating to this Stipulation. Lead Plaintiff (either on its own behalf or on behalf of the Class) may not cancel or terminate this Stipulation or the Settlement (whether in accordance with the provisions of this Stipulation or otherwise) based on the Court's or any appellate court's ruling with respect to the Fee and Expense Application or any application for the award of attorneys' fees or litigation expenses in the Action.

#### **ADMINISTRATION OF THE SETTLEMENT**

26. Any Class Member who fails to timely submit a valid Proof of Claim (substantially in the form of Exhibit 3 hereto) will not be entitled to receive any of the proceeds from the Net Settlement Fund, except as otherwise ordered by the Court, and will be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and all releases provided for herein, including but not limited to being barred from bringing any action against the Released Defendants that is based upon, arises out of, or relates to any of the Released Plaintiff Claims.

27. Upon receiving any request(s) for exclusion pursuant to the Notice, Lead Counsel shall, no later than ten (10) business days after receiving a request for exclusion or twenty (20) calendar days before the Settlement Hearing, whichever is earlier, notify BoA's Counsel of such request(s) for exclusion, and provide copies of such request(s) for exclusion and any documentation accompanying them by email.

28. Lead Counsel, following consultation with and agreement by Lead Plaintiff, shall be responsible for designating the Claims Administrator, subject to approval by the Court, and Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator.

29. For purposes of determining the extent, if any, to which a Class Member shall be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim, substantially in the form attached as Exhibit 3, supported by such documents as are designated therein, including proof of loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) To be timely, all Proofs of Claim must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice. All Proofs of Claim received before the motion for the Distribution Order shall be deemed to be submitted when mailed, if received with a postmark on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

30. Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed, subject to review by the Court:

(a) Proofs of Claim that do not meet the submission requirements may be rejected. In the interest of achieving substantial justice, Lead Counsel shall have the right, but not the obligation, to instruct the Claims Administrator to waive what Lead Counsel deems to be formal or technical defects in any submitted Proof of Claim, and the Administrator shall follow such instructions. Prior to rejecting a Proof of Claim in whole or in part, the Claims Administrator shall communicate with the claimant in writing to give the claimant the chance to

remedy any curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all claimants whose claims the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in that notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (b) below;

(b) If any claimant whose claim has been rejected in whole or in part desires to contest that rejection, the claimant must, within twenty (20) calendar days after the date of mailing of the notice required in subparagraph (a) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court;

(c) The determinations of the Claims Administrator accepting or rejecting disputed claims shall be presented to the Court, on notice to Defense Counsel, for approval by the Court in the Distribution Order.

31. Each claimant who submits a Proof of Claim shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, including, but not limited to, all releases provided for herein and in the Judgment, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the claimant's status as a Class Member and the validity and amount of the claimant's claim. In connection with processing the Proofs of Claim, no discovery shall be allowed on the merits of the Action or the Settlement.



32. Payment under the Distribution Order shall be deemed final and conclusive against any and all Class Members. Each Class Member whose claim is not approved by the Court shall be deemed to have waived his, her, or its right to share in the Settlement Fund and shall forever be barred from participating in distributions from the Net Settlement Fund, and shall be bound by all the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein and therein, and including but not limited to being barred from bringing any action against the Released Defendants concerning the Released Plaintiff Claims.

33. If there is any balance remaining in the Net Settlement Fund after at least six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Lead Counsel shall, if feasible and economical, reallocate such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Any balance that still remains in the Net Settlement Fund, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to one or more non-sectarian, not-for-profit charitable organizations, serving the public interest, and qualified under Internal Revenue Code §501(c)(3), designated by Lead Plaintiff and approved by the Court. In no event shall any part of the Net Settlement Fund revert to any Defendant or its insurers.

34. All proceedings with respect to the administration, processing, and determination of claims described by this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the exclusive jurisdiction of the Court, but shall not in any event delay or affect the finality of the Judgment.

35. No Person shall have any claim of any kind against the Released Defendants or Defense Counsel with respect to the matters set forth in Paragraphs 26-33, or otherwise related in any way to the administration of the Settlement, the Plan of Allocation, or the Distribution Order, including, without limitation, the processing of claims and distributions.

36. No Person shall have any claim against Lead Plaintiff, Lead Counsel, or the Claims Administrator or any employees or agents of any of the foregoing, based upon the distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or otherwise approved or directed by order of the Court.

37. No Person that is not a Class Member (including, without limitation, those who exclude themselves from the Class) shall have any right to any share of the Net Settlement Fund or to receive any distribution therefrom.

#### **TERMS OF THE PRELIMINARY APPROVAL ORDER**

38. Concurrently with its application for preliminary Court approval of the Settlement contemplated by this Stipulation and promptly upon execution of this Stipulation, Lead Counsel shall apply to the Court for entry of the Preliminary Approval Order, which shall be substantially in the form attached as Exhibit 4. The Preliminary Approval Order will, *inter alia*, set the date for the Settlement Hearing and prescribe the method for giving notice of the Settlement to the Class. BoA shall reasonably cooperate with Lead Counsel, or its designee, to provide transfer and other records to assist in providing notice to members of the Class, without charge and in a mutually acceptable format, by the time Lead Plaintiff moves for preliminary approval of the settlement.

## **TERMS OF THE JUDGMENT**

39. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defense Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit 5, dismissing this Action with prejudice. The proposed Judgment shall contain, *inter alia*, the releases described in Paragraphs 2-5 of this Stipulation.

40. Nothing in this Stipulation shall prevent any Person that timely submits a valid request for exclusion from commencing, prosecuting, or asserting any of the Released Plaintiff Claims against any of the Released Defendants. If any such Person commences, prosecutes, or asserts any of the Released Plaintiff Claims against any of the Released Defendants, nothing in this Stipulation shall prevent the Released Defendants from asserting any claim of any kind against such Person, including any of the Released Defendant Claims, or from seeking contribution or indemnity from any Person, including another Released Defendant, in respect of the claim of that Person who is excluded from the Class pursuant to a timely and valid request for exclusion. However, nothing contained herein shall permit any Released Party to assert any claim against Released Plaintiffs with respect to the claim of any such Person.

## **EFFECTIVE DATE OF SETTLEMENT**

41. The Effective Date of this Settlement shall be the first business day on which all of the following shall have occurred or have been waived:

- (a) entry of the Preliminary Approval Order, which shall be substantially in the form set forth in Exhibit 4;
- (b) payment of the Settlement Amount into the Escrow Account;
- (c) approval by the Court of the Settlement, following notice to the Class and the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;

(d) a Judgment, which shall be substantially in the form set forth in Exhibit 5, has been entered by the Court and has become Final; and

(e) the time has expired for Lead Plaintiff and Defendants to exercise their termination rights set forth in Paragraphs 43-48 below and in the Supplemental Agreement.

42. The time set forth in Paragraph 41 above for the Effective Date to occur shall not be affected in any respect whatsoever by any appeal or proceeding seeking judicial review pertaining to: (i) Court approval of the Plan of Allocation; (ii) the Fee and Expense Application; or (iii) the Court's findings and conclusions under Section 21D(c)(1) of the Exchange Act, 15 U.S.C. § 78u-4(c)(1).

### **TERMINATION**

43. Defendants and Lead Plaintiff shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice"), through counsel, to all other Settling Parties (including PSERS but excluding other Class Members) hereto within fourteen (14) calendar days of: (i) the Court's Final refusal to enter the Preliminary Approval Order in any material respect; (ii) the Court's Final refusal to approve this Stipulation or any material part of it (including, without limitation, by making any material changes to the releases set forth in Paragraphs 2-5 of this Stipulation); (iii) the Court's Final refusal to enter the Judgment or any material part of it (including, without limitation, by making any material changes to the releases set forth in Paragraphs 2-5 of this Stipulation); or (iv) the date upon which the Judgment is vacated, modified, or reversed in any material respect by a Final order of the Court, the United States Court of Appeals or the Supreme Court of the United States.

44. No order or decision of the Court or modification or reversal of any order or decision of the Court concerning the Plan of Allocation or the Fee and Expense Application shall constitute grounds for cancellation or termination of this Stipulation or the Settlement.

45. Simultaneously herewith, Counsel for BoA and Lead Counsel are executing a Confidential Supplemental Agreement (the "Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions under which BoA shall have the unilateral option to terminate the Settlement and render this Stipulation null and void if requests for exclusion from the Class exceed certain agreed-upon criteria (the "Termination Threshold"). PSERS and BoA agree to maintain to the extent permitted by law the confidentiality of the Termination Threshold in the Supplemental Agreement which, unless otherwise ordered by the Court, shall not be filed with the Court, but may be examined *in camera*, if so requested by the Court or otherwise required by court rule, provided, however, that nothing herein shall in any way preclude Defendants from complying with the Class Action Fairness Act of 2005, including the notification requirements thereof.

46. Lead Plaintiff shall have the right to terminate the Settlement with Defendants and render this Stipulation null and void if BoA does not pay, or cause to be paid, the Settlement Amount within the period provided in Paragraph 6 above, by providing written notice of its election to terminate to all Settling Parties (including PSERS but excluding other Class Members) and, thereafter, if BoA fails to pay, or cause to be paid, the Settlement Amount within seven (7) calendar days of that written notice.

47. If this Stipulation is terminated, the Settlement is not approved by the Court, the Effective Date does not occur, or the Settlement otherwise fails for any reason:

(a) within five (5) business days, the Settlement Fund (including the Settlement Amount and accrued interest thereon), less any Notice and Administration Expenses actually incurred or paid, and less any Taxes paid or due or owing, shall be refunded to the Person(s) that made the deposit(s) in accordance with instructions provided by BoA to Lead Counsel;

(b) no later than thirty (30) calendar days after receiving notice of any of the events set forth in Paragraph 22, Lead Counsel shall refund the full amount of any award of attorneys' fees and litigation expenses already paid to Lead Counsel, of any paid amounts, plus accrued earnings at the same net rate and for the same periods as is earned by the Settlement Fund;

(c) the Settlement shall be null, void, and without prejudice, and none of its terms shall have any further force or effect or be enforceable except as specifically provided herein;

(d) the Action shall proceed in all respects as if this Stipulation had not been entered and all negotiations, discussions, acts, Court orders, and other proceedings in connection therewith shall be treated as if they never existed;

(e) the parties to this Stipulation shall be deemed to have reverted to their respective litigation positions in the Action as of August 12, 2015 (when the parties reached an agreement in principle to settle the Action);

(f) any judgment(s) or order(s) entered by the Court in accordance with or as a result of the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*;

(g) the parties shall have the full and complete right and ability in any future proceedings in this Court to litigate the claims asserted in the Action on the merits; and

(h) the facts and terms of this Stipulation and any aspect of the discussions and negotiations leading to this Stipulation, shall not be admissible in this Action or any other action, or used in any court filings, depositions, at trial, or otherwise.

48. If any Defendant or Lead Plaintiff terminates the Settlement and this Stipulation (whether in accordance with the provisions hereof or otherwise) but the other disputes the basis for that termination, each agrees that (i) in the first instance, they shall consult with Judge Phillips (or, if he is not available, a mediator agreed upon by Defendants and Lead Plaintiff) in a good-faith effort to achieve a mediated resolution of the dispute; and (ii) if that mediation is unsuccessful, then they shall submit that dispute to the Court, which shall have exclusive jurisdiction to resolve and rule on the right of the party seeking termination to terminate the Settlement and this Stipulation.

#### **NO ADMISSION OF WRONGDOING**

49. Defendants have denied and continue to deny, *inter alia*, that Defendants committed or intended to commit any wrongdoing or violations of law arising out of any of the conduct, statements, acts, or omissions alleged in this Action, or acted fraudulently or wrongfully in any way; that Defendants made any material misstatements or omissions; that Defendants acted with the requisite state of mind for any liability; that the prices of BoA common stock or Common Equivalent Securities were artificially inflated by reason of any alleged misrepresentations, omissions, or otherwise; that either Lead Plaintiff or the Class Members have suffered any or all damages alleged in the Complaint, Amended Complaint or any of the complaints filed or proposed to be filed in the Action; or that the alleged harm suffered by Lead Plaintiff or other putative Class Members, if any, was causally linked to any alleged misrepresentations or omissions. Each Defendant denies the allegations against him, her, or it

concerning any alleged wrongdoing or violations of law. In addition, Defendants maintain that their conduct was at all times proper and in compliance with applicable provisions of law and that they have meritorious defenses to all claims alleged in the Action.

50. Notwithstanding the foregoing, Defendants have concluded that further litigation of the Action, especially given the complexity of cases such as this one, would be protracted, burdensome, and expensive, and that it is desirable and beneficial to them that they secure releases to the fullest extent permitted by law and that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Stipulation.

51. Except as set forth in Paragraph 52 below, this Stipulation, whether or not consummated, and whether or not approved by the Court, and any discussions, negotiations, acts performed, proceedings, communications, drafts, documents, or agreements relating to this Stipulation, the Settlement, and any matters arising in connection with settlement discussions or negotiations, proceedings, communications, or agreements, shall not be offered or received against or to the prejudice of any Releasing Party for any purpose other than in an action to enforce the terms of this Stipulation and the Settlement, and in particular:

(a) do not constitute, and shall not be described as, construed as, or otherwise offered or received against any Releasing Defendant as evidence of (or deemed to be evidence of) any admission, concession, or presumption by any of the Releasing Defendants with respect to (i) the truth of any allegation in any complaint filed, or any amended complaint proposed to be filed, in the Action (whether by Lead Plaintiff or otherwise); (ii) the validity of any claim that has been or could have been asserted in the Action or in any litigation or proceeding in any forum, including but not limited to the Released Plaintiff Claims; (iii) the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation or



proceeding in any forum; or (iv) any liability, damages, negligence, fault, or wrongdoing of Defendants or any Person whatsoever;

(b) do not constitute, and shall not be described as, construed as, or otherwise offered or received against any Releasing Defendant as evidence of (or deemed to be evidence of) any admission, concession, or presumption of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Releasing Defendant, or against any Releasing Plaintiff as evidence of any infirmity in the Released Plaintiff Claims;

(c) do not constitute, shall not be described as, construed as, or offered or received against or to the prejudice of any of the Releasing Parties as evidence of (or deemed to be evidence of) any admission, concession, or presumption with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any Releasing Party, in any other civil, criminal, or administrative action or proceeding;

(d) do not constitute, and shall not be described as, construed as, or otherwise offered or received against any Releasing Party as evidence of (or deemed to be evidence of) any admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) do not constitute, and shall not be described as, construed as, or otherwise offered or received against any Releasing Party as evidence of (or deemed to be evidence of) any admission, concession, or presumption that any Released Claim is without merit or infirm or that damages recoverable under the any of the complaints filed or proposed to be filed in the Action would not have exceeded the Settlement Amount.

52. Notwithstanding Paragraph 51 above, the Released Parties may file or use this Stipulation or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, statutes of limitations, statutes of repose, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate any liability protection granted to them. The Released Parties may file or refer to this Stipulation or the Judgment in any action that may be brought to enforce the terms of this Stipulation or the Judgment. All Released Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

53. Nothing in this Stipulation shall bar any action by Lead Plaintiff or any Defendant to enforce or effectuate the terms of this Stipulation, the Settlement, the Preliminary Approval Order, or the Judgment.

#### **MISCELLANEOUS PROVISIONS**

54. All the exhibits to this Stipulation, and the Supplemental Agreement and the exhibits thereto, are fully incorporated herein by reference. Notwithstanding the foregoing, in the event that there is a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit hereto, the terms of this Stipulation shall prevail. This Stipulation (including exhibits) and the Supplemental Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all counsel who have executed this Stipulation or their successors.

55. BoA warrants that, at the time of payment of the Settlement Amount, BoA will not be insolvent; nor will payment of the Settlement Amount render BoA insolvent, within the

meaning of or for the purposes of the United States Bankruptcy Code, including Sections 101 and 547 thereof.

56. Pending Final determination of whether the Settlement should be approved, no Released Plaintiff nor anyone acting or purporting to act on his, her, or its behalf shall institute, commence, participate in, or prosecute any action or proceeding that asserts, whether directly, indirectly, or derivatively, any Released Plaintiff Claim against any Released Defendant.

57. Lead Plaintiff and Defendants intend the Settlement to be the full, final, and complete resolution of all claims asserted or which could have been asserted by the Releasing Parties with respect to the Released Claims.

58. Lead Plaintiff and Defendants agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length and in good faith in connection with a mediation conducted under the auspices of Judge Phillips, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel. Accordingly, while retaining their rights to deny that the claims and defenses asserted in the Action were meritorious, Lead Plaintiff and Defendants each agree not to assert in any forum that this Action was brought by Lead Plaintiff or defended by Defendants in bad faith or without reasonable basis. No party shall assert in any forum a violation of Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, or other rule, regulation, statute, contract, judicial opinion, common law or other legal or equitable principle against anyone with respect to the institution, maintenance, prosecution, defense or settlement of this Action.

59. Lead Plaintiff and Defendants agree that the terms of the Settlement, as well as this Stipulation and the fact that it has been executed, are strictly confidential until this Stipulation has been filed with the Court; provided, however, that nothing herein shall preclude

Lead Plaintiff and Defendants from communicating the terms of the settlement to their advisors, complying with their disclosure obligations, or communicating the Settlement in principle to the Court.

60. The headings herein are used for the purpose of convenience only and are not meant to have legal effect or affect the interpretation or construction of this Stipulation.

61. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and any expenses, and implementing and enforcing the terms of this Stipulation.

62. This Stipulation, its exhibits, and the Supplemental Agreement constitute the entire agreement and understanding between and among Lead Plaintiff and Defendants concerning the Settlement, and no representations, warranties, or inducements have been made by any Settling Party concerning this Stipulation and the Supplemental Agreement and their exhibits other than those contained and memorialized in such documents. In entering into this Stipulation, neither Lead Plaintiff nor any Defendant is relying on any promise, warranty, inducement, or representation other than those set forth in this Stipulation and Supplemental Agreement and each Lead Plaintiff and Defendant disclaims the existence of any such promise, warranty, inducement, or representation.

63. Nothing in this Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney client privilege, the joint defense privilege, or work product protection.

64. Without further order of the Court, Lead Plaintiff and Defendants may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

65. All designations and agreements made, or orders entered during the course of the Action relating to the confidentiality of documents or information shall survive and remain in full force and effect and be binding in all respects on Lead Plaintiff, BoA and Executive Defendants even if this Stipulation is terminated, the Settlement is not approved, or the Effective Date does not occur. Consistent with the terms of the Confidentiality Stipulation and Order in this Action, which shall survive this Stipulation, within thirty (30) days after receiving notice of entry of an order, judgment or decree finally ending the Action (including without limitation any appeals therefrom, or the running of time to take such an appeal, if later), Lead Plaintiff, BoA and Executive Defendants shall promptly identify and destroy or return to the producing party, all discovery material produced in this Action (and copies thereof) designated “Confidential” or “Highly Confidential”, provided that Lead Plaintiff, BoA and Executive Defendants shall not be required to destroy or return such discovery material that is (1) attached to any pleading, motion paper, or other submission filed with the Court; (2) included in correspondence with the Court or between the parties; or (3) marked as an exhibit to a deposition or at trial. Notwithstanding the foregoing, Lead Plaintiff, BoA and Executive Defendants need not destroy or return discovery material produced in this Action (and copies thereof) designated “Confidential” or “Highly Confidential” when (i) such information or material was transmitted electronically and whose removal or destruction from a party’s electronic systems would violate applicable federal or state law, rule or regulation, or policies and procedures reasonably designed to ensure compliance with such law, rule or regulation or (ii) such information is saved on backup media in an electronically stored format, for which a receiving party may certify to have complied with the

30-day destruction period if the receiving party has a data destruction policy for the backup media resulting in the eventual destruction or overwriting of the electronically stored information.

66. This Stipulation shall be binding when signed, but the Settlement shall be effective only on the condition that the Effective Date occurs. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Released Parties.

67. The construction, interpretation, operation, effect, and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by and construed according to the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

68. This Stipulation shall not be construed more strictly against Lead Plaintiff or any Defendant merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for Lead Plaintiff or any Defendant, it being recognized that it is the result of arm's-length negotiations among Lead Plaintiff and Defendants, and Lead Plaintiff and Defendants have contributed substantially and materially to the preparation of this Stipulation.

69. Any counsel and other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, represents and warrants that they have the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

70. Lead Plaintiff and Defendants and their counsel agree to cooperate reasonably with one another in promptly seeking Court approval of the Settlement, and to agree promptly upon and execute all other documentation as reasonably may be required to obtain Final approval by the Court of the Settlement.

71. The provisions of and obligations in Paragraphs 22-24, 48, 51, 59 and 65 shall survive and remain in full force and effect and be binding in all respects even if this Stipulation is terminated, the Settlement is not approved, or the Effective Date does not occur.

72. Whenever this Stipulation requires or contemplates notice be provided, such notice shall be provided by electronic mail or next-day express delivery service as follows and shall be deemed effective upon such transmission or delivery, as set forth below:

If to Defendants or their counsel, then to:

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Inc., SG Americas Securities, LLC, Samsung  
Securities Co., Ltd., Samuel A. Ramirez & Co., Inc.,  
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73. Except as otherwise provided herein, Defendants, Lead Plaintiff, and the Class Members shall bear their own costs.

74. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signatures sent via facsimile or in PDF form via e-mail shall be deemed originals.

**IN WITNESS WHEREOF**, Lead Plaintiff and Defendants have caused this Stipulation to be executed, by their duly authorized attorneys, as of \_\_\_\_\_, 2016.

Dated: \_\_\_\_\_, 2016

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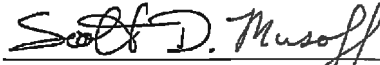
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*Lead Counsel for the Lead Plaintiff Pennsylvania  
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Dated: March 11, 2016

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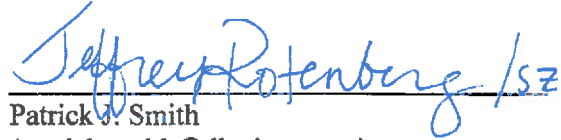


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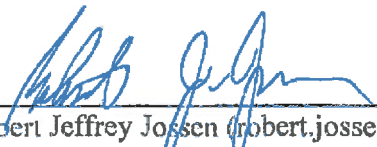
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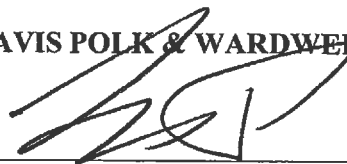
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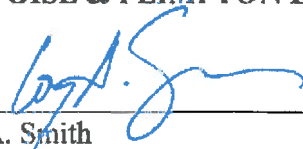
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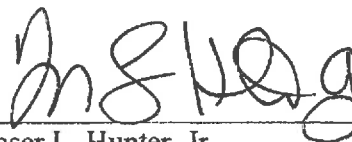
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Capital, Inc.), Goldman, Sachs & Co., ICBC  
International Securities Ltd., Keefe, Bruyette &  
Woods, Inc., KeyBanc Capital Markets Inc.,  
Macquarie Capital (USA) Inc., Merrill Lynch,  
Pierce, Fenner & Smith Incorporated, Mizuho  
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National Australia Bank Limited, RBS Securities  
Inc., SG Americas Securities, LLC, Samsung  
Securities Co., Ltd., Samuel A. Ramirez & Co., Inc.,  
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