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**Comptroller of the Currency  
Administrator of National Banks**

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Washington, D.C.

**Conditional Approval #899  
May 2009**

April 23, 2009

Ms. Radhi Thayu  
Assistant General Counsel  
Bank of America Corporation  
NC1-002-29-01  
101 South Tryon Street  
Charlotte, NC 28255

Re: Application to Charter Bank of America North Carolina, National Association, Charlotte,  
North Carolina  
Application Control Number: 2009-ML-01-0001

Dear Ms. Thayu:

The Office of the Comptroller of the Currency (“OCC”) hereby preliminary conditionally approves the application to establish Bank of America North Carolina, National Association (“Bank”), as a wholesale bank<sup>1</sup> with its main office located in Charlotte, North Carolina, for the reasons and subject to the requirements stated below. This preliminary conditional approval is granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the application and by the Bank’s representatives. The OCC has determined that the bank meets the statutory factors for preliminary conditional approval of a charter, and for designation as a wholesale bank.

The Bank will hold deposits generated from deposit sweep arrangements with its affiliated broker dealers, including Merrill Lynch, Pierce, Fenner & Smith, Incorporated and possibly, unaffiliated entities.<sup>2</sup> These deposits will be held in money market and transaction accounts at the Bank. The Bank will not take deposits directly from individual consumers. Although the deposits that Bank will hold will be beneficially owned by the individual brokerage customers,

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<sup>1</sup> On March 18, 2009, BAC submitted a written request to OCC Compliance Policy in accordance with 12 C.F.R. § 25.25(b), seeking designation as a wholesale bank for Bank of America North Carolina, N.A. for purposes of assessing its performance under the Community Reinvestment Act. On April 7, 2009 the OCC approved the request for a wholesale designation.

<sup>2</sup> On January 1, 2009, Bank of America Corporation (“BAC”) acquired Merrill Lynch & Co., Inc., (“Merrill Lynch”). The purpose of the deposit sweeps is to provide customers of the broker dealers with FDIC insurance coverage for their brokerage deposits.

the Bank will have a direct contractual relationship in the form of a deposit agreement only with the broker dealers that offer the deposit sweep product, not with the individual customers.<sup>3</sup> The Bank will also participate in various lending facilities offered by the Federal Reserve banks, primarily TAF (Term Auction Facility) and Fed Funds, to provide an additional source of funding for its affiliates. In addition, the Bank will acquire mortgage loans (i.e., 1-4 family residential and home equity lines of credit) and/or mortgage-backed securities from its insured bank affiliate, Bank of America, N.A. ("BANA"), and hold them on its balance sheet in order to maintain the appropriate capital ratios. The Bank will pledge the mortgage loans and/or mortgage-backed securities as collateral to secure borrowing from the Federal Reserve Banks.<sup>4</sup> The Bank will use funds borrowed from its affiliates to purchase these mortgage loans and mortgage-backed securities. The Bank's main and only office will be in Charlotte, North Carolina at a facility leased from BAC or its affiliates.<sup>5</sup>

The OCC has authority to approve the formation of a new national bank pursuant to 12 U.S.C. § 1 *et seq.*

Pursuant to the authority of 12 U.S.C. § 93a, the OCC has issued an implementing regulation regarding chartering national banks, which is set forth at 12 C.F.R. § 5.20. This regulation establishes the OCC's general policies regarding chartering a national bank and the means by which the OCC evaluates particular elements of an application to establish a national bank. In evaluating an application to establish a national bank, the OCC considers whether the proposed bank: 1) has organizers who are familiar with national banking laws and regulations; 2) has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided; 3) has capital that is sufficient to support the projected volume and types of business; 4) can reasonably be expected to achieve and maintain profitability; and 5) will be operated in a safe and sound manner. 12 C.F.R. § 5.20 (f)(2).

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<sup>3</sup> The individual brokerage customers' accounts will be FDIC insured. FDIC insurance rules provide for pass-through insurance when a depositor is holding funds in custody or trust for beneficial owners. FDIC rules provide that each beneficial owner is insured up to \$250,000. The Bank will set up these accounts to comply with the pass-through requirements. Although each account would be established in the relevant broker dealer's name, the Bank will identify that the account is not merely a broker dealer proprietary account but that it is held for the benefit of its customers.

<sup>4</sup> BAC has represented that Bank of America North Carolina, N.A. will acquire mortgage loans and other assets from Bank of America, N.A. ("BANA") only, and the mortgage loans and other assets so acquired will not include any mortgage loans or other assets that BANA acquired: (1) directly from any Merrill Lynch entity on or after September 15, 2008, including as a result of a merger between BANA and a Merrill Lynch entity, or other acquisition by BANA of a Merrill Lynch entity; (2) from an affiliate of BANA that acquired the mortgage loans or other assets, directly or indirectly, through other affiliates, from a Merrill Lynch entity on or after September 15, 2008, including as a result of a merger or other acquisition by the affiliate of a Merrill Lynch entity; (3) directly from any Countrywide entity on or after January 11, 2008, including as a result of a merger between BANA and a Countrywide entity, or other acquisition by BANA of a Countrywide entity; or (4) from an affiliate of BANA that acquired the mortgage loans or other assets, directly or indirectly, through other affiliates, from a Countrywide entity on or after January 11, 2008, including as a result of a merger or other acquisition by the affiliate of a Countrywide entity.

<sup>5</sup> The Bank does not anticipate establishing branches.

Based on a thorough evaluation of all information in the record and available to the OCC including the representations and commitments made in the application, the OCC finds that preliminary approval of Bank of America North Carolina, National Association is consistent with these statutory, regulatory, and policy standards. However, the OCC will not grant final approval for the Bank to commence the business of banking until all legal requirements have been satisfied. 12 U.S.C. § 21, et seq.; 12 C.F.R. § 5.20(i)(5).

The OCC poses no objection to the following persons serving as executive officers, directors and/or organizers as proposed in the application:

<u>Name</u>	<u>Title</u>
Amy Woods Brinkley	Director; Chief Risk Officer
Barbara J. Desoer	Director; President, Mortgage, Home Equity and Insurance Services
Kenneth D. Lewis	Director, Chairman of the Board; CEO; President
Liam E. McGee	Director; President, Consumer & Small Business Bank
Brian T. Moynihan	Director; President, Global Banking and Global Wealth and Investment Management
Joe L. Price	Director; Chief Financial Officer
Richard K. Struthers	Director, President, Global Card Services
Allison Gilliam	Organizer
Alice A. Herald	Organizer
Nina Tai	Organizer
Radhi Thayu	Organizer
Phillip A. Wertz	Organizer

Under 12 U.S.C. § 72, at least a majority of a national bank's directors must meet certain residency requirements, but the OCC is authorized to waive these requirements. Your request to waive the residency requirements of 12 U.S.C. § 72 for all members of the board of directors of the Bank is hereby approved. This waiver is granted based upon a review of all available information, including the filing and any subsequent correspondence and telephone conversations, and the Bank's representation that this waiver will not affect the board's responsibility to direct the Bank's operations in a safe, sound, and legal manner. The OCC reserves the right to withdraw or modify this waiver and, at its discretion, to request additional information at any time in the future.

The Charters Booklet of the *Comptroller's Licensing Manual* provides guidance for organizing the Bank and is available at: <http://www.occ.treas.gov/corpbook/group4/public/pdf/charters.pdf>. This booklet contains all of the steps you must take to receive your charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt the Articles of Association, sign the Organization Certificate, and forward these documents to this office. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval. However, the Bank may not begin the business of

banking until it fulfills all requirements for a bank in organization and the OCC grants final approval.

This decision to grant preliminary conditional approval was made with the understanding that the proposed Bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (“FDIC”).

This preliminary approval is subject to the following conditions:

(1) The Bank shall obtain a written no objection determination from the OCC’s Large Bank Supervision prior to expanding its deposit sweep activity to non-affiliated broker dealers; and

(2) The Bank (i) shall give the OCC’s Large Bank Supervision at least sixty (60) days prior written notice of its intent to significantly deviate or change from the business plan or operations and (ii) shall obtain the OCC’s written determination of no objection before the Bank engages in any significant deviation or change from the business plan or operations.

The conditions of this preliminary conditional approval are conditions “imposed in writing by a Federal banking agency in connection with any action any on application, notice or other request” within the meaning of 12 U.S.C. § 1818. As such, these conditions are enforceable under 12 U.S.C. § 1818.

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted until all pre-opening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke this preliminary approval should the OCC deem any interim development to warrant such action. Final approval will not be granted until and unless the Federal Reserve acts favorably on your application to acquire the Bank.

This preliminary conditional approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our preliminary conditional approval is based on the Bank’s representations, submissions, and information available to the OCC as of this date. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence regarding this application should reference the application control number. A separate letter is enclosed requesting your feedback on how we handled this application. We

would appreciate your response so that we may improve our service. If you have any questions please contact me at (202) 874-5294 or by email at [Stephen.Lybarger@occ.treas.gov](mailto:Stephen.Lybarger@occ.treas.gov).

Sincerely,

*signed*

Stephen A. Lybarger  
Large Bank Licensing Lead Expert

Enclosure: survey