UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

January 26, 2011

Mr. Bruce E. Coolidge
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Re: In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated
Bank of America Corporation – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Coolidge:

This is in response to your letter dated January 20, 2011, written on behalf of Bank of America Corporation (BOA) and its subsidiary Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill) and constituting an application for relief from BOA being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). BOA requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry on January 25, 2011, of a Commission Order (Order) pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), naming Merrill as a respondent. The Order, among other things, requires that Merrill cease and desist from committing or causing any violations of Sections 15(c)(1)(A), 15(b)(4)(E), 15(g) and 17(a) of the Exchange Act.

Based on the facts and representations in your letter, and assuming BOA and Merrill comply with the Order, the Commission, pursuant to delegated authority, has determined that BOA has made a showing of good cause under Rule 405(2) and that BOA will not be considered an ineligible issuer under Rule 405 of the Securities Act by reason of the entry of the Order. Accordingly, BOA's application for relief is hereby granted, and the effectiveness of such relief is as of the date of the entry of the Order. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

Mary J. Kosterlitz

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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January 20, 2011

BY E-MAIL AND FEDEX

Mary J. Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated* (File No. HO-10038)

Dear Ms. Kosterlitz:

We submit this application on behalf our client Bank of America Corporation ("BOA") in connection with a settlement arising out of the above-captioned investigation by the Securities and Exchange Commission (the "Commission"). The anticipated settlement will result in the issuance of an order that is described below against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill"), a broker-dealer subsidiary of BOA (the "Order").

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act"), BOA hereby requests that the Commission determine that for good cause shown it is not necessary under the circumstances that BOA be considered an "ineligible issuer" under Rule 405. BOA requests that this determination be effective as of the date of the entry of the Order. The Staff of the Division of Enforcement has informed BOA that it does not object to the Commission providing the requested determination.

BACKGROUND

The Staff of the Division of Enforcement and Merrill engaged in settlement discussions in connection with the contemplated administrative proceeding arising out of the above-captioned investigation. As a result of these discussions, Merrill has submitted an Offer of Settlement (the "Offer") to be presented to the Commission. In the Offer, Merrill has agreed to consent to the entry of the Order, without admitting or denying the findings contained therein (other than those relating to the jurisdiction of the Commission, which are admitted solely for purposes of the proceedings). In the Order, the Commission will make findings that Merrill (1) improperly charged mark-ups and mark-downs on certain riskless principal trades of institutional and high net worth customers for which the firm had agreed to charge only a commission equivalent and (2) that Merrill's proprietary traders obtained information about institutional customer orders from traders on the market making desk and used it to place trades on Merrill's behalf. The Order will find that as a result of its activities, Merrill violated Sections 15(c)(1)(A), 15(b)(4)(E), 15(g), and 17(a) of the Exchange Act. Based on these

findings and significant voluntary remedial measures already taken by Merrill, the Order will censure Merrill, order it to cease and desist from committing or causing any violation of the regulations listed above, and order it to pay a civil money penalty of $10,000,000.

DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.[1/] As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the "well-known seasoned issuer," and a new category of offering communication, the "free writing prospectus." A well-known seasoned issuer is eligible for important reforms that have changed the way corporate finance transactions for larger issuers are planned and structured. These reforms include the ability to "file-and-go" (*i.e.*, eligibility for automatically effective shelf registration statements) and "pay-as-you-go" (*i.e.*, the ability to pay filing fees as the issuer sells securities off the shelf). These reforms have removed the risk of regulatory delay in connection with capital formation. In addition, well-known seasoned issuers are provided with the most flexibility in terms of communications, including the ability to use free writing prospectuses in advance of filing a registration statement.

The Commission also created another category of issuer under Rule 405, the "ineligible issuer." An ineligible issuer is excluded from the category of "well-known seasoned issuer" and is ineligible to make communications by way of free writing prospectuses, except in limited circumstances.[2/] As a result, an ineligible issuer that would otherwise be a well-known seasoned issuer does not have access to file-and-go or pay-as-you-go, and cannot use most free writing prospectuses.

Securities Act Rule 405 authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."[3/] The Commission has delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.[4/]

BOA understands that the entry of the Order would make BOA an ineligible issuer under Rule 405. Merrill is and has been since January 1, 2009 a wholly-owned subsidiary of BOA. Thus, it will be when the Order is entered an "entity that at the time was subsidiary of the issuer" that will be "made

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1/ *See* Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

2/ *See* Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

3/ Securities Act Rule 405, 17 C.F.R. § 230.405.

4/ 17 C.F.R. § 200.30-1(a)(10).

the subject of [an] administrative order..."[5/] If BOA is not an ineligible issuer, it would continue to qualify as a well-known seasoned issuer, and, therefore, have access to file-and-go and other reforms available to well-known seasoned issuers, and would continue to be eligible to take advantage of all of the free writing prospectus reforms of Rules 164 and 433.

BOA respectfully requests that the Commission determine that it is not necessary for BOA to be considered an ineligible issuer. Applying the ineligibility provisions to BOA would be disproportionately and unduly severe because the conduct addressed in the Order does not pertain to activities undertaken by BOA or its subsidiaries in connection with BOA's role as an issuer of securities (or any disclosure related thereto) or any of its filings with the Commission.

In light of these considerations, we believe there is good cause to determine that BOA should not be considered an ineligible issuer under Rule 405. We respectfully request the Commission to make that determination.

Please contact me at the above listed telephone number if you should have any questions regarding this request.

Sincerely,

Bruce E. Coolidge

cc: Christopher Chatfield, Bank of America, Legal Department

5/ Securities Act Rule 405, definition of "Ineligible Issuer", Sec. 1(vi), 17 C.F.R. § 230.405.