



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

December 30, 2011

Robert L. Tortoriello, Esq.  
Cleary, Gottlieb, Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006-1470

Dear Mr. Tortoriello:

This responds to your request for confirmation that Bank of America, Inc. ("BAC"), Charlotte, North Carolina, would no longer be deemed to control BlackRock, Inc. ("BlackRock"), New York, New York, or any of its subsidiaries, for purposes of the Bank Holding Company Act of 1956, as amended ("BHC Act"), as a result of BAC's substantial divestiture of its equity investment in, and changes to its business relationships with, BlackRock.<sup>1</sup> BAC is a financial holding company for purposes of the BHC Act. BlackRock is an investment banking and asset management firm.<sup>2</sup>

Background

BAC acquired all the outstanding shares of Merrill Lynch & Co., Inc. ("Merrill"), New York, New York, on January 1, 2009. As a result of this transaction, BAC also acquired Merrill's ownership interest in BlackRock, and rights and obligations with respect to BlackRock, including the contractual ability to nominate two directors to BlackRock's board of directors. BAC and BlackRock also engaged, and continue to engage, in various business relationships described below.

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<sup>1</sup> Correspondence related to this request includes your letter dated April 21, 2011, to Scott G. Alvarez, as well as other communications with Board staff in person, by telephone, and by e-mail.

<sup>2</sup> BlackRock is a subsidiary of The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania. PNC owns 23.9 percent of the voting shares, and approximately 21.0 percent of the total equity, of BlackRock.

In connection with acquiring control of Merrill, BAC assumed certain existing contractual agreements between Merrill and BlackRock. Pursuant to a Dual Employee Agreement, a wholly owned subsidiary of BAC, Bank of America, N.A. ("BANA"), Charlotte, North Carolina, and BlackRock Investment Management, New York, New York, an investment management subsidiary of BlackRock, have approximately 40 dual employees who facilitate the provision of investment management services to fiduciary customers of BANA's trust division. Pursuant to a Global Distribution Agreement ("Distribution Agreement"), Merrill must distribute BlackRock products on at least the same economic terms as any other product offered or distributed by Merrill Lynch. BAC proposes to retain these relationships. In addition, BAC engages, and wishes to engage in the future, in other business relationships with BlackRock on an arms-length basis, including but not limited to investment management and advisory services, fund administration, securities borrowing and lending, and portfolio management and analysis.

BAC's ownership interest in and rights with respect to BlackRock have been reduced through a series of subsequent transactions. As a result, BAC, directly or indirectly, now owns, controls, and holds with power to vote less than 1 percent of the voting and total equity of BlackRock. BAC no longer has a right to director representation on the board of BlackRock, and BAC's current representative on Blackrock's board will not stand for reelection. BAC has stated that it does not propose to control or exercise a controlling influence over BlackRock and that, given the reduction of its investment and *de minimis* business relationships, its interest in BlackRock is passive.

For purposes of the BHC Act, a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.<sup>3</sup> The Board's Regulation Y also sets forth a set of rebuttable presumptions of control.<sup>4</sup> The BHC Act and the Board's Regulation Y presume that any company that directly or indirectly owns, controls, or has the power to

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<sup>3</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>4</sup> See 12 CFR 225.31(d).

vote less than 5 percent of any class of voting securities of a bank or other company does not control the bank or other company.<sup>5</sup>

The Board previously has found that a company that controlled another company for a significant period may be able to exert a controlling influence over the company even after a substantial divestiture. As a result, the Board generally has required that the controlling company divest below five percent of the voting equity of the company to establish that it has relinquished its control position.<sup>6</sup>

BAC has divested or otherwise reduced its investment to below five percent of the voting shares and total equity of BlackRock, and BAC's relationship with BlackRock would not trigger any of the rebuttable presumptions of control in the BHC Act or the Board's Regulation Y. In addition, the investment would conform to the Board's policy statement on equity investments in banks and bank holding companies.<sup>7</sup> Notably, another entity has a significantly larger voting and equity ownership interest in BlackRock and is considered to control BlackRock for purposes of the BHC Act.

Based on all the facts of record in this case, staff would not at this time recommend that the Board find that BAC controls BlackRock for purposes of the BHC Act. In reaching this determination, staff relied on all the facts of record, including all the representations made by or on behalf of BAC and BlackRock, whether noted in this letter or otherwise contained in your correspondence with the Board. Any change in the terms or circumstances of the transaction may result in a different opinion. In this regard, you should advise staff immediately of any material changes in the facts noted above.

To address the possibility of a controlling influence developing in the future, the Board retains the authority to review the investment and relationships regularly to determine whether, under all the facts and circumstances, BAC is acting in a manner that suggests it has a controlling influence over BlackRock for

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<sup>5</sup> See 12 U.S.C. § 1841(a)(3), 12 CFR 225.31(e).

<sup>6</sup> See "Statement of policy concerning divestitures by bank holding companies," 12 CFR 225.138.

<sup>7</sup> See "Policy statement on equity investments in banks and bank holding companies," 12 CFR 225.144.

purposes of the BHC Act. If you have any questions about this matter, please contact Brian P. Knestout, Senior Attorney (202-452-2249), or Christopher M. Paridon, Counsel (202-452-3274), of the Board's Legal Division.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott G. Allen". The signature is written in a cursive style with a large, looped initial "A" at the end.