

FEDERAL RESERVE SYSTEM

Bank of America Corporation
Charlotte, North Carolina

Order Approving Notice to Engage in Activities Complementary to a Financial Activity

Bank of America Corporation (“Bank of America”), Charlotte, North Carolina, a financial holding company (“FHC”) within the meaning of the Bank Holding Company Act (“BHC Act”),¹ has provided notice (“Notice”) under section 4(k) of the BHC Act² and the Board’s Regulation Y³ to trade in tin as an activity complementary to the financial activity of engaging as principal in commodity derivative transactions. The Board has not previously specifically approved tin for trading as a physical commodity under the BHC Act.⁴

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1843.

³ 12 CFR part 225.

⁴ Contemporaneous with this order, the General Counsel has confirmed through an opinion letter that Bank of America may enter into long-term electricity supply contracts with certain counterparties under authority previously granted to Bank of America by the Board, subject to certain conditions, as an activity complementary to the financial activity of engaging as principal in commodity derivatives transactions. Letter to William W. Templeton, Esq., Associate General Counsel, Bank of America Corporation (May 18, 2026).

Background

Under section 4(c)(8) of the BHC Act, as amended by the Gramm–Leach–Bliley Act,⁵ a bank holding company may engage in activities that the Board had determined, by regulation or order prior to November 12, 1999, were so closely related to banking as to be a proper incident thereto.⁶ These activities include engaging as principal in derivative contracts based on financial and nonfinancial assets (“Commodity Derivatives”).⁷ Under Regulation Y, a bank holding company may conduct Commodity Derivatives activities subject to certain restrictions that are designed to limit the bank holding company’s activity to trading and investing in financial instruments, rather than dealing directly in physical commodities.⁸ Under these restrictions, a bank holding company generally is not allowed to take or make delivery of nonfinancial commodities underlying Commodity Derivatives or to purchase or sell nonfinancial commodities in the spot market.

In addition, the BHC Act permits an FHC to engage in activities that are financial in nature or incidental to a financial activity, as defined in section 4(k) of the BHC Act.⁹ The BHC Act permits the Board to determine, in consultation with the Secretary of the Treasury, that an activity is financial in nature or incidental to a financial activity.¹⁰

The BHC Act also permits an FHC to engage in any activity that the Board determines is complementary to a financial activity and does not pose a substantial risk to

⁵ Pub. L. No. 106-102, 113 Stat. 1338 (1999).

⁶ 12 U.S.C. § 1843(c)(8).

⁷ 12 CFR 225.28(b)(8)(ii).

⁸ Commodity Derivatives that are permissible for bank holding companies under Regulation Y are hereinafter referred to as “BHC-permissible Commodity Derivatives.”

⁹ 12 U.S.C. § 1843(k).

¹⁰ 12 U.S.C. § 1843(k)(1)(A).

the safety or soundness of depository institutions or the financial system generally.¹¹ This authority is intended to allow the Board to permit FHCs to engage, on a limited basis, in an activity that, although not necessarily financial in nature, is so meaningfully connected to a financial activity such that it complements the financial activity.¹² The BHC Act provides the Board with exclusive authority to determine that an activity is complementary to a financial activity.

The BHC Act provides that any FHC seeking to engage in a complementary activity must provide prior notice under section 4(j) of the BHC Act.¹³ When reviewing such a proposal, the Board is required by the BHC Act to consider, in addition to the considerations described above, whether performance of the activity by the FHC can reasonably be expected to produce public benefits, such as “greater convenience, increased competition, or gains in efficiency,” that outweigh possible adverse effects, such as “undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system.”¹⁴ The Board previously has determined that trading in physical commodities and taking and making delivery of physical commodities to settle BHC-permissible Commodity Derivatives in which an FHC currently engages (together, “Physical Commodity Trading”) are complementary to the financial activity of engaging as principal in BHC-permissible Commodity Derivatives.¹⁵

¹¹ 12 U.S.C. § 1843(k)(1)(B).

¹² See *Bank Holding Companies and Change in Bank Control*, 68 *Federal Register* 68493, 68497 (Dec. 9, 2003); see also 145 Cong. Rec. 28550 (1999) (statement of Rep. Leach) (“It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.”).

¹³ 12 U.S.C. § 1843(j).

¹⁴ 12 U.S.C. § 1843(j)(2)(A); see also 12 CFR 225.89(b) (describing the relevant factors for consideration by the Board).

¹⁵ See, e.g., *JPMorgan Chase & Co.*, 92 Federal Reserve Bulletin C57 (2005); *Royal Bank of Scotland Group plc*, 94 Federal Reserve Bulletin C60 (2008); *Société Générale*,

In 2007, Bank of America received approval to engage in Physical Commodity Trading as an activity that is complementary to its Commodity Derivatives activities.¹⁶ Bank of America's approval was subject to conditions and commitments of a type the Board previously has imposed in connection with notices by other FHCs to engage in Physical Commodity Trading. These conditions and commitments limit the size and scope of Physical Commodity Trading and are designed to limit the potential risks of Physical Commodity Trading, including safety-and-soundness risks and risks associated with storage and transportation. They also help to ensure that Physical Commodity Trading remains complementary to the financial activity of BHC-permissible Commodity Derivatives activities.¹⁷ In connection with the proposal by Bank of America that was approved in 2007, Bank of America committed to trade only in commodities for which futures or options on futures contracts ("derivatives contracts") have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission ("CFTC") (unless specifically excluded by the Board) or other commodities that have been specifically authorized by the Board (collectively, "Permissible Commodities").¹⁸ Bank of America also committed to limit the aggregate market value

92 Federal Reserve Bulletin C113 (2006); *Deutsche Bank AG*, 92 Federal Reserve Bulletin C54 (2005); *Barclays Bank PLC*, 90 Federal Reserve Bulletin 511 (2004); *UBS AG*, 90 Federal Reserve Bulletin 215 (2004); *Citigroup Inc.*, 89 Federal Reserve Bulletin 508 (2003).

¹⁶ Letter to Gregory A. Baer, Esq., Deputy General Counsel, Bank of America Corporation (April 24, 2007) ("2007 Approval").

¹⁷ See, e.g., *Citigroup Inc.*, 89 Federal Reserve Bulletin 508; 2007 Approval.

¹⁸ Any particular commodity derivative contract for which Bank of America takes physical settlement need not be exchange-traded; however, in the absence of specific Board approval, futures or options on futures on the commodity underlying the derivative contract must have been authorized for trading on a U.S. futures exchange by the CFTC.

In previous approvals, the Board approved FHCs to trade in any commodity if "derivatives contracts" for the commodity are authorized by the CFTC for trading on a "U.S. futures exchange." At the time of those approvals, the CFTC authorized trading of futures and options on futures. The Board also referred to "futures or options on futures"

of all commodities that it may hold at any one time pursuant to its Physical Commodity Trading to 5 percent of its consolidated tier 1 capital.

Bank of America's Proposal

Bank of America currently engages in Physical Commodity Trading through five nonbank subsidiaries: BofA Securities, Inc., New York, New York; BofA Securities Europe SA, Paris, France; Merrill Lynch Commodities, Inc., Houston, Texas; Merrill Lynch International, LLC, London, England; and Merrill Lynch Commodities Canada, ULC, Toronto, Canada (collectively, the "Bank of America Physical Commodities Subsidiaries"). These activities include taking or making delivery, holding inventory, and engaging in other spot-market transactions of Permissible Commodities. Bank of America engages in Commodity Derivatives activities through its lead bank subsidiary, Bank of America, National Association, Charlotte, North Carolina, and through its Ireland-chartered bank subsidiary, Bank of America Europe Designated Activity Company, Dublin, Ireland. Bank of America has represented that customer-driven Commodity Derivatives activities conducted by its bank subsidiaries and by

in its discussion of the scope of Physical Commodity Trading authority. Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") increased the kinds of derivatives contracts, and the kinds of derivatives-trading organizations, regulated by the CFTC. 15 U.S.C. § 8301 *et seq.* The CFTC, in addition to futures and options on futures, now regulates certain "swaps." Moreover, the CFTC now regulates "swap execution facilities," which may facilitate trading of swaps, in addition to "designated contract markets," which were not regulated prior to passage of the Dodd-Frank Act and which now may list futures, options, and swaps for trading. *See id.* These legislative changes have raised questions regarding the scope of authority available to FHCs under these prior approvals. The Board interprets these prior approvals to permit trading under the regulatory framework prevailing at the time, which did not include swaps. Accordingly, at this time, an FHC approved to trade in physical commodities may trade only in any commodity for which futures or options on futures are authorized by the CFTC (either through certification or approval) for trading on a designated contract market.

certain of the Bank of America Physical Commodities Subsidiaries are hedged with physical commodities held by the Bank of America Physical Commodities Subsidiaries.

Bank of America has requested that the Board incrementally expand its authority to engage in Physical Commodity Trading to include tin. Bank of America proposes to engage in Physical Commodity Trading in tin in accordance with the conditions on, and commitments made in connection with, its current authority to engage in Physical Commodity Trading.

Trading in Tin

As discussed above, the Board has approved notices to engage in Physical Commodity Trading in reliance on a commitment that the FHC trade only in Permissible Commodities. This commitment provides a means to ensure that the Physical Commodity Trading remains complementary to the financial activity of BHC-permissible Commodity Derivatives activities because it helps to demonstrate that there is a derivatives market for the underlying commodity. This commitment also is intended to prevent FHCs from dealing in finished goods and other items, such as real estate or industrial products, that lack the fungibility and liquidity of exchange-traded commodities. The Board believes that, subject to certain requirements, an FHC may take delivery of certain commodities that have not been authorized by the CFTC but are similarly fungible and liquid without being exposed to significant additional risk.¹⁹

Whether a commodity derivative is authorized by the CFTC is a useful factor when considering if a derivative or the underlying commodity is liquid and fungible; however, such authorization is not the only relevant test of those characteristics. For some liquid and fungible commodities, no market-maker has sought CFTC authorization because of the presence of an established foreign trading market, which may deter a U.S. exchange from listing a similar product. The absence of CFTC

¹⁹ See *Royal Bank of Scotland Group plc*, 94 Federal Reserve Bulletin C60 (2008).

authorization in those cases generally would not indicate that taking and making physical delivery of the commodity would entail substantially greater risks than taking and making delivery of a CFTC-authorized commodity. As a general matter, the fact that a derivatives contract based on the commodity trades on a non-U.S. exchange that is subject to a regulatory structure comparable to the one administered by the CFTC should be sufficient to demonstrate that (i) there is a market in financially settled contracts on the commodity, (ii) the commodity is fungible, and (iii) a reasonably liquid market for the commodity exists. On this basis, the Board previously has granted specific approval for FHCs with Physical Commodity Trading authority to trade in nickel, a metal traded on the London Metal Exchange (“LME”).²⁰

Bank of America specifically has requested approval to take and make physical delivery of tin. Tin is not currently a Permissible Commodity because the CFTC has not authorized trading in any tin futures contracts, or in any options contracts on tin futures, on a designated contract market in the United States, and the Board has not previously specifically authorized tin in acting on previous Physical Commodity Trading requests. However, futures and options contracts for tin are traded on the LME, one of the largest trading markets in the world for nonferrous and other metals. The LME offers futures and options contracts for tin and other metals such as aluminum, copper, lead, nickel, and zinc. The LME is a large and liquid market.²¹ The CFTC previously has determined that the LME is subject to a regulatory structure comparable to that administered by the CFTC under the Commodities Exchange Act.²² Given the nature of

²⁰ *Id.*

²¹ As of December 31, 2024, LME Clear Limited had approximately \$8.7 billion in derivative financial assets and liabilities, and it reported an average daily volume of 664,000 lots for 2024. LME Clear Ltd., Directors’ Report and Financial Statements 23 (December 31, 2024), <https://share.google/jqc93irrKEoc8Kyol>.

²² The CFTC’s Rule 30.10 permits a person affected by the requirements contained in Part 30 of the CFTC’s rules, which relate to registration as a futures commission merchant, to petition the CFTC for an exemption from the requirements based on the

the LME trading market and the CFTC's determination that the LME is subject to comparable regulatory oversight, the Board has determined that tin is a Permissible Commodity and Bank of America may take and make delivery of tin as part of its Physical Commodity Trading, subject to the conditions and commitments made in connection with its Physical Commodity Trading.

Substantial Risk to the Safety and Soundness of Depository Institutions or the Financial System Generally

As noted above, to authorize Bank of America to engage in a complementary activity, the Board must determine that the activity does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.²³ Through its existing authority to engage in BHC-permissible Commodity Derivatives, Bank of America already may incur the price risk associated with tin. Permitting Bank of America to buy and sell tin in the spot market or to physically settle futures and options contracts for tin would not appear to increase significantly the organization's potential exposure to price risk. Expansion of Bank of America's Physical Commodity Trading authority to include trading in physical tin would provide Bank of America with additional options to hedge its clients' derivatives

person's demonstration that an exemption is not contrary to the public interest, including by demonstrating substituted compliance with a foreign regulatory structure found comparable to that administered by the CFTC under the Commodities Exchange Act, 17 CFR 30.10; 17 CFR part 30, appendix A. The inclusion of the LME in the CFTC's so-called "30.10 program" is reflected in an order issued by the CFTC to the United Kingdom's Financial Services Authority that consolidates the relief set forth in prior orders issued pursuant to Rule 30.10 regarding sales of futures and options to customers in the United States by certain firms in the United Kingdom. Foreign Futures and Options Transactions, 68 *Fed. Reg.* 58583, 58585 (October 10, 2003); *see also* 17 CFR 3.10(c)(4); Exemption from Registration for Certain Firms with Regulation 30.10 Relief, 73 *Fed. Reg.* 54069 (September 18, 2008) (codifying the earlier relief letters under Rule 30.10).

²³ 12 U.S.C. § 1843(k)(1)(B).

positions in tin. Bank of America and its Physical Commodity Trading also remain subject to the general commodities laws and regulations of the CFTC.

The Board determines that trading in tin does not pose a substantial risk to Bank of America, depository institutions, or the financial system generally, as the market for tin derivatives is sufficiently liquid, and trading in such products is subject to regulatory oversight deemed comparable by the CFTC.²⁴

Balance of Public Benefits and Risks of the Proposed Activities

The Board also must consider whether the performance of the proposed activities by Bank of America “can be reasonably expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”²⁵ Bank of America represents that approval of the Notice likely would benefit Bank of America’s customers by enhancing Bank of America’s ability to provide efficiently a broader range of commodity-related services.

The Board believes that Bank of America has the managerial expertise and internal control framework to manage the risk of trading in tin. Bank of America has shown that it has the expertise and internal controls to manage effectively the risks of Physical Commodity Trading. Bank of America has established and maintains policies for monitoring, measuring, and controlling the credit, market, settlement, legal, and operational risks involved in its Physical Commodity Trading. These policies are intended to address key areas, such as counterparty credit risk, value-at-risk methodology, and internal limits with respect to commodity trading, new business and

²⁴ See *supra* note 22.

²⁵ See 12 U.S.C. § 1843(j)(2)(A); see also 12 CFR 225.89(b)(3).

new product approvals, and identification of transactions that require higher levels of internal approval. The policies also describe critical internal control elements, such as reporting lines, and the frequency and scope of internal audits of physical commodities activities. Based on all the facts of record, the Board believes that Bank of America has the managerial capabilities and control framework to manage adequately the risks of taking and making delivery of tin as proposed.

As noted, Bank of America already incurs the price risk of commodities generally under its existing BHC-permissible Commodity Derivatives activities, and expansion of those activities to include trading in tin would not appear to increase significantly the organization's potential exposure to that risk. To further mitigate possible adverse effects from an FHC's engagement in complementary activities, the Board previously has stated that complementary activities should be limited in size and scope relative to an FHC's financial activities. The conditions imposed in the 2007 Approval, as well as Bank of America's commitments provided in connection with the 2007 Approval and as modified for the subject request, should help to limit any possible adverse effects of Bank of America's performance of the proposed activities. For example, the Board has subjected Bank of America's Physical Commodity Trading to conditions and commitments restricting the size and scope of such activities, including that the total market value of Permissible Commodities held must not exceed 5 percent of Bank of America's consolidated tier 1 capital. Allowing Physical Commodity Trading to include trading in tin would not increase the overall position that Bank of America may take in Permissible Commodities.

To assess the likely effect of a proposal on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the incremental effect of the proposal on the systemic "footprint" of the firm. These metrics include measures of the size of the firm, the availability of substitute providers for any critical products and services offered by the firm, the interconnectedness of the firm with the banking or financial system, the extent to which the firm's engagement in the new

activity contributes to the complexity of the financial system, and the extent to which the firm's engagement in the new activity impacts cross-border activities of the firm.²⁶ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.²⁷

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. Performance of the proposed activity would not result in a significant increase in the size of Bank of America, nor would it result in a decrease in availability of substitute providers of critical financial services. In addition, the proposed activity would not heighten Bank of America's interconnectedness with other firms or markets in such a way that would significantly increase risks to the financial system in the event of the financial distress of Bank of America. The firm's exposure to physical commodities markets is expected to remain small, and Bank of America represents that tin would form a small percentage of its revenue from, and assets related to, Physical Commodity Trading, which represent less than 1 percent of Bank of America's overall revenue and assets. As noted, Bank of America also has committed to limit its aggregate Physical Commodity Trading, including the proposal to trade in tin, to a maximum of 5 percent of Bank of America's consolidated tier 1 capital. The proposal also would not have meaningful effects on the cross-border activities of Bank of America and would not lead to changes in its organizational structure or complexity, or otherwise

²⁶ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

²⁷ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

involve unique characteristics that would complicate its resolution.²⁸ Based on consideration of the facts and circumstances, this proposal would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system.

In light of all the facts and circumstances, the Board believes that the performance of the proposed activities on a limited basis reasonably can be expected to produce benefits to the public that outweigh possible adverse effects of the proposal.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the Notice should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's determination is subject to all the conditions set forth in Regulation Y and to the Board's authority to require modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the Notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in

²⁸ The Board also considered the global systemically important bank ("G-SIB") method 1 score of Bank of America. The G-SIB method 1 score is a measure of a firm's systemic importance and is a weighted sum of an institution's indicators of size, interconnectedness, complexity, cross-jurisdictional activity, and substitutability. *See* 80 *Federal Register* 49082 (August 14, 2015). The Board estimates the proposed activity would not significantly increase Bank of America's method 1 score.

connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.²⁹

By order of the Board of Governors,³⁰ effective May 18, 2026.

(signed) Michele Taylor Fennell

Michele Taylor Fennell
Associate Secretary of the Board

²⁹ See 12 U.S.C. § 1818(b)(1).

³⁰ Voting for this action: Chair Powell, Vice Chair Jefferson, Vice Chair for Supervision Bowman, and Governors Waller, Cook, Barr, and Miran.