



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

SCOTT G. ALVAREZ
GENERAL COUNSEL

August 22, 2007

Timothy J. Mayopoulos, Esq.
Executive Vice President and
General Counsel
Bank of America Corporation
100 North Tryon Street
Charlotte, North Carolina 28255-0001

Dear Mr. Mayopoulos:

This is in response to your letter dated August 22, 2007, concerning a proposed investment by Bank of America Corporation (“BofA”), Charlotte, North Carolina, in Countrywide Financial Corporation (“CFC”), Calabasas, California. BofA is a bank holding company registered with the Board under the Bank Holding Company Act (“BHC Act”).¹ The lead subsidiary bank of BofA is Bank of America, National Association (“Bank”), Charlotte, North Carolina. CFC is a savings and loan holding company that is registered with the Office of Thrift Supervision under the Home Owners’ Loan Act.² CFC controls Countrywide Bank FSB, Alexandria, Virginia, a federal savings bank.

BofA proposes to acquire, indirectly through Bank, 20,000 shares of Series B Nonvoting Convertible Preferred Stock to be newly issued by CFC (“Preferred Stock”) for an aggregate purchase price of \$2.0 billion. The voting rights associated with the Preferred Stock will be limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preferences of the Preferred Stock. The Preferred Stock will represent approximately 15 percent of CFC’s total equity. The

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. § 1461 et seq.

Preferred Stock will be convertible at the option of the holder into approximately 15.7 percent of the voting common stock of CFC.

Section 4(a) of the BHC Act generally prohibits a bank holding company from directly or indirectly owning or controlling any voting securities of, or otherwise controlling, a company that is not a bank.³ Section 4 also provides certain exceptions to this general prohibition. One of these exceptions, section 4(c)(6) of the BHC Act, permits a bank holding company to acquire up to 5 percent of the outstanding shares of any class of voting securities of a company.⁴ Under the Board's long-standing interpretations of this provision, an investment by a bank holding company in a nonbanking company may qualify for the section 4(c)(6) exception only if the investment (i) represents 5 percent or less of each class of voting securities of the nonbanking company; (ii) represents less than 25 percent of the total equity of the nonbanking company; and (iii) is otherwise noncontrolling.⁵

Because the voting rights of the Preferred Stock will be limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preferences of the Preferred Stock, the Preferred Stock will qualify as nonvoting securities for purposes of the BHC Act.⁶ In addition, the Preferred Stock will represent less than 25 percent of the total equity of CFC. BofA also has committed that it will not exercise a controlling influence over the management or policies of CFC. BofA will not have any representation (including observers) on the board of directors of CFC. BofA also has agreed with CFC not to transfer any CFC voting securities received upon conversion of the Preferred Stock for a period of 18 months after the date of conversion and has agreed to certain additional standstill restrictions.

³ 12 U.S.C. § 1843(a).

⁴ 12 U.S.C. § 1843(c)(6); see also 12 CFR 225.22(d)(5).

⁵ See Federal Reserve Regulatory Service 4-189.

⁶ 12 CFR 225.2(q). Although the holders of the Preferred Stock would be entitled to designate two directors to CFC's board of directors if CFC has not paid dividends on the Preferred Stock for six quarters (and until CFC has paid dividends for two consecutive quarters), the Board traditionally has permitted preferred stock to have such rights and retain its status as nonvoting securities. See 49 Federal Register 794, 800 (Jan. 5, 1984).

As noted above, the Preferred Stock is convertible into voting securities of CFC. Section 225.31(d)(1)(i) of Regulation Y provides that a “company that owns, controls, or holds securities that are immediately convertible, at the option of the holder or owner, into voting securities of a bank or other company, controls the voting securities.”⁷ Consistent with this regulatory presumption, the Board traditionally has deemed a company to control voting securities underlying convertible securities if the company has the ability immediately to convert the securities into voting securities or has the ability to transfer the convertible securities to third parties.⁸

BofA has provided the Board several commitments designed to limit BofA’s ability to acquire or transfer control over more than 5 percent of a class of voting securities of CFC. BofA has committed that the Preferred Stock will not be converted while owned by Bank, and the Office of the Comptroller of the Currency has conditioned its action on a requirement that Bank not convert the Preferred Stock. In addition, BofA has committed that it will not convert the Preferred Stock into more than 4.9 percent of a class of voting securities of CFC without the Board’s prior approval.⁹ BofA also has committed that Bank will not transfer Preferred Stock to BofA or any nonbanking subsidiary of BofA in an aggregate amount that would convert into 5 percent or more of a class of voting securities of CFC without prior approval from the Board.

In addition, BofA has committed that, without the prior approval of the Board, BofA and its nonbanking subsidiaries will not transfer to any unaffiliated entity in the aggregate 5 percent or more of any CFC common stock that may be acquired as a result of a conversion and Bank will not transfer the Preferred Stock to any unaffiliated entity in an aggregate amount that would convert into 5 percent or more of a class of voting securities of CFC. Certain exceptions to the prior approval requirements specified in the previous sentence exist if the shares in excess of 5 percent are transferred in a widely dispersed public offering; are sold in private sales in which no purchaser or group of related purchasers would acquire common stock, or Preferred Shares that would convert

⁷ 12 CFR 225.31(d)(1)(i).

⁸ See 12 CFR 225.143.

⁹ BofA may, however, hold more than 4.9 percent on a temporary basis in order to sell the voting securities in accordance with the limitations discussed below.

into common stock, that is or represents more than 2 percent of a class of CFC's voting securities; and for sales to a purchaser acquiring majority control of CFC.

In view of all the facts in this case, including in particular the conversion and transfer commitments made by BofA, the limited indicia of control by BofA over CFC, and the limitations imposed by the OCC, the Legal Division would not recommend that the Board require an application in this case and believes that the investment is permissible under section 4(c)(6) of the BHC Act.

In reaching the determinations set forth in this letter, I have relied on all the facts of record, including all the representations and commitments made by or on behalf of BofA, Bank, and CFC (whether noted in this letter or otherwise contained in your correspondence and discussions with the Board and Board staff). These representations and commitments are deemed to be conditions imposed in writing in connection with your request and, as such, may be enforced in proceedings under applicable law. Any change in the terms or circumstances of the proposed investment may result in a different decision. In this regard, you should advise Board staff before making any material modification to the proposal and should provide Board staff with a copy of the final documentation regarding the proposal when it has been completed.

The Board retains the authority to review the investment and relationships between BofA and CFC regularly to determine whether, under all the facts and circumstances, BofA may continue to hold the Preferred Stock investment in CFC under section 4(c)(6) of the BHC Act. The Board also retains the authority to issue regulations and orders as may be necessary to prevent evasions of the BHC Act.¹⁰

Sincerely,

(signed)

cc: Federal Reserve Bank of Richmond
Federal Reserve Bank of San Francisco

¹⁰ 12 U.S.C. § 1844(b).