



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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

March 30, 2009

Gregory A. Baer, Esq.
Deputy General Counsel
Regulatory & Public Policy
Bank of America
730 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Baer:

This is in response to the request by Bank of America Corporation (“BAC”), Charlotte, North Carolina, for temporary relief from the Board’s risk-based and leverage capital guidelines for bank holding companies (“Capital Rules”)¹ in connection with its acquisition of Merrill Lynch & Company, Inc. (“Merrill Lynch”), New York, New York.

BAC acquired a substantial amount of deferred tax assets (“DTAs”) in the Merrill Lynch acquisition that are dependent on future taxable income. The Capital Rules limit the amount of DTAs that a bank holding company may include in tier 1 capital to the lesser of (i) 10 percent of tier 1 capital or (ii) the amount of DTAs that the bank holding company expects to realize within one year of the calendar quarter-end date based on projections of future taxable income for that year (“look-forward period”).² BAC has requested approval to include in tier 1 capital the DTAs it acquired in the Merrill Lynch acquisition based on projections of future taxable income for a three-year look-forward period. The Board has broad authority to provide exemptions from the Capital Rules.³

The Board has concluded that granting BAC a limited expansion on the DTA look-forward period to three years for the first year after its acquisition of Merrill

¹ 12 CFR part 225, Appendices A and D.

² See 12 CFR part 225, Appendix A, § II.A.4.a.

³ See 12 CFR part 225, Appendix A, § III.A.; Appendix D, § II.b.; Appendix G, § 1(c).

Lynch and to two years for the second year, while maintaining a DTA ceiling of 10 percent of tier 1 capital, would allow BAC to employ a substantial portion of the considerable amount of DTAs generated by its acquisition of Merrill Lynch, which has experienced significant financial difficulties. At the same time, look-forward periods of two to three years provide reasonable certainty that BAC would obtain capital relief only for those DTAs that it would be able to use based on actual future earnings. Furthermore, granting BAC's request would be consistent with relief from the Capital Rules that the Board has previously granted to other banking organizations that have acquired institutions with financial difficulties.⁴

In accordance with these determinations, the Board hereby grants BAC's request to include in tier 1 capital, from the consummation of its acquisition of Merrill Lynch until January 1, 2010, an aggregate amount of DTAs equal to the lesser of (i) 10 percent of tier 1 capital or (ii) the sum of (A) the amount of DTAs acquired as a result of its acquisition of Merrill Lynch that BAC expects to realize within three years of the date of the end of the calendar quarter in which the acquisition was completed, based on projections of future taxable income for those three years, plus (B) the amount of DTAs not related to Merrill Lynch that BAC expects to realize within one year of the date of the end of the calendar quarter in which the acquisition was completed, based on projections of future taxable income for that year. From January 1, 2010, to January 1, 2011, BAC may apply a look-forward period of two years, rather than three years, in the manner described above for DTAs acquired as a result of the Merrill Lynch acquisition. The temporary DTA relief will expire on January 1, 2011.

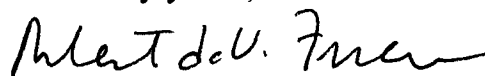
The economic valuation of DTAs is dependent on the existence of future earnings and their value as assets is based on projections of future earnings. In BAC's review of valuations of its DTAs and their inclusion in tier 1 capital, BAC has committed to value its DTAs for purposes of calculating its capital ratios using the same projection and valuation methods and assumptions used to measure DTAs for generally accepted accounting purposes, subject to the same internal controls and external auditing reviews applied to those methods and assumptions.

These determinations are specifically conditioned on compliance by BAC with all the commitments and representations made to the Board in connection with this request. These commitments and representations are deemed to be conditions imposed in writing by the Board in connection with granting the request and, as such,

⁴ See Board letters to James S. Keller, Esq. (The PNC Financial Services Group, Inc.), December 22, 2008; and Paul A. Ackerman (Wells Fargo & Company), February 20, 2009.

may be enforced in proceedings under applicable law. These determinations are also based on the specific facts and circumstances of the existing relationship between BAC and Merrill Lynch. Any material change in those facts or circumstances or any failure by BAC to observe any of its commitments or representations may result in a different determination or in revocation of the exemptions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert deV. Frierson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert deV. Frierson
Deputy Secretary of the Board

cc: Federal Reserve Bank of Richmond
Office of the Comptroller of the Currency