

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

**Civil Action No. 3:13-cv-00447**

**BANK OF AMERICA, N.A., BANC OF  
AMERICA MORTGAGE SECURITIES, INC.,  
and MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC. f/k/a BANC OF AMERICA  
SECURITIES LLC,**

**Defendants.**

**PLAN OF DISTRIBUTION FOR BANK OF AMERICA MORTGAGE OBLIGATIONS  
DISTRIBUTION FUND**

**A. Introduction**

1. On August 6, 2013, the Securities and Exchange Commission (“SEC” or “Commission”) brought suit against Defendant Bank of America, N.A. (“BANA”), Banc of America Mortgage Securities, Inc. (“BOAMS”), and Merrill Lynch, Pierce, Fenner & Smith, Inc. f/k/a Banc of America Securities LLC (“Merrill Lynch”) (collectively, “Defendants”).<sup>1</sup> In its Complaint for Injunctive and Other Relief, the SEC alleged that Defendants misrepresented and omitted certain material facts regarding the residential mortgage-backed securities (“RMBS”), known as the BOAMS 2008-A Trust (“BOAMS Trust” or “Trust”), which were offered and sold in 2008. Specifically, the SEC alleged that Defendants portrayed the BOAMS Trust as being

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<sup>1</sup> Docket entry (“DE”) 1.

backed by “prime” mortgage loans when, in fact, an unprecedented portion of the mortgage loans backing the security had been originated through mortgage brokers unaffiliated with BANA entities and were not of prime quality.

2. Pursuant to the Final Judgments as to BANA, BOAMS and Merrill Lynch (the “Final Judgments”) dated November 25, 2014,<sup>2</sup> Defendants consented to entry of a judgment for violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, 15 U.S.C. §§ 77q(a)(2) and (a)(3). They jointly paid disgorgement of \$109,220,000, prejudgment interest of \$6,620,000 and a civil money penalty of \$109,220,000; however, these amounts were deemed satisfied in full by the payment made by BANA to the United States Department of Justice (“DOJ”) in accordance with the terms of an agreement dated August 20, 2014, among BANA, the DOJ and certain states (the “DOJ Agreement”). Of the amount paid by Defendants, \$115,840,000 was transferred by the DOJ to the Commission for distribution to harmed investors (the “BOA Mortgage Obligations Distribution Fund” or “Distribution Fund”).

3. The Court appointed Damasco & Associates LLP (“Damasco”), as the Tax Administrator on October 21, 2015.<sup>3</sup> Damasco is now known as Miller Kaplan Arase LLP, and includes its partners, Jude and Julia Damasco.<sup>4</sup>

4. On November 18, 2016, the Court entered an order appointing Garden City Group, LLC (“GCG”) as the Distribution Agent (the “Order”).<sup>5</sup>

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<sup>2</sup> DE 50, 52, and 51, respectively.

<sup>3</sup> DE 55.

<sup>4</sup> See In the Matter of Certain Disgorgement and Fair Funds in Administrative Proceedings: Notice of Name Change of Appointed Tax Administrator, Exchange Act Rel. No. 81064 (June 30, 2017).

<sup>5</sup> DE 57.

5. This Plan of Distribution (the “Plan”) sets forth the method and procedures for distributing the BOA Mortgage Obligations Distribution Fund established pursuant to the Final Judgments and the DOJ Agreement. As provided in the Order, the BOA Mortgage Obligations Distribution Fund is to be distributed pursuant to the Plan developed by the Distribution Agent.

6. The purpose of this distribution is to compensate investors in the BOAMS Trust harmed by Defendants’ misrepresentations and omissions in the offering materials for the BOAMS Trust. The methodology allocates the Distribution Fund to an Eligible Claimant (defined below) based on the proportion of the Eligible Claimant’s investment in the BOAMS Trust divided by the sum of all Eligible Claimants’ investments in the BOAMS Trust.

7. The Commission has custody of the Distribution Fund and shall retain control of the assets of the Distribution Fund. The Distribution Fund is currently deposited in a Commission designated interest bearing account at the United States Department of the Treasury (“Treasury”), where it will be held until a disbursement occurs. It is not anticipated that the Distribution Fund will receive additional funds, other than accumulated interest and earnings from investments.

8. Pursuant to the Order, all reasonable administrative costs and expenses of the distribution, including the fees and expenses of the Distribution Agent shall be paid from the Distribution Fund under this Court’s jurisdiction. The Distribution Agent shall submit invoices on a quarterly basis to Commission staff for approval and payment. The Distribution Agent’s proposed fees and expenses have been accepted by the Commission staff in the selection process; Commission staff may approve the Distribution Agent’s invoices for fees and expenses not to exceed the revised proposal amount of \$43,504, without further order of this Court. Any

additional fees and expenses may not be paid from the Distribution Fund without prior approval of the Court.

9. This Plan sets forth the methods and procedures for distributing the Distribution Fund. This Plan is subject to approval by the Court, and the Court retains exclusive jurisdiction over the implementation of this Plan.

**B. Definitions**

As used herein, the following definitions shall apply:

10. “BOA Mortgage Obligations Distribution Fund” or Distribution Fund” shall refer to the \$109,220,000 of disgorgement and \$6,620,000 of prejudgment interest for a total of \$115,840,000 transferred to the Commission, pursuant to the DOJ Agreement.

11. “Claim Deficiency Notice” shall mean the notice sent by the Distribution Agent within sixty (60) days of the Filing Deadline to a Potentially Eligible Claimant whose claim is deficient in one or more ways (*e.g.*, failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason(s) for the deficiency and the opportunity to cure such deficiency. Subject to certain extensions provided for in this Plan, the deadline to cure deficiencies shall be thirty (30) days from the date of the Claim Deficiency Notice.

12. “Claim Determination Date” shall mean the date on or before which the Distribution Agent is to reach its determination concerning the validity and amount of each claim. Except as otherwise provided herein, the Claim Determination Date shall be no later than sixty (60) days after the Filing Deadline.

13. “Claim Determination Notice” shall mean the notice sent by the Distribution Agent on or before the Claim Determination Date to inform an Eligible Claimant that their claim

has been accepted and setting forth their accepted investment amount. The Claim Determination Notice will also advise the Eligible Claimant that the distribution payment amount will be determined at a later date pursuant to paragraphs 55-56 below, and will provide the estimated amount of their Projected Minimum Recovery. The Eligible Claimant will also be advised of their right to submit a Request for Reconsideration if they disagree with the accepted investment amount.

14. “Days” shall mean calendar days, unless otherwise specified herein (will not be capitalized).

15. “Distribution Agent” shall mean GCG, the firm appointed by the Court to assist with the administration and distribution of the Distribution Fund in accordance with the terms of this Plan and the Court’s orders.

16. “Eligible Certificates” shall mean the certificates in the BOAMS Trust. The relevant CUSIP numbers are listed in Appendix A to this Plan.

17. “Eligible Claimant” shall mean a person or entity (other than an Excluded Party) who purchased Eligible Certificates on Eligible Purchase Dates, and who held certificates on March 20, 2008.

18. “Eligible Purchase Dates” shall mean the purchases of Eligible Certificates that were made prior to March 20, 2008 (the date the trustee of the BOAMS Trust issued its second report).

19. “Excluded Parties” shall mean Defendants and all other entities or individuals who (a) are or have at any time been a parent, subsidiary, affiliate, partner, or member of any of the Defendants; (b) exercised control of or were controlled by any of the Defendants; or (c) were employed by, or served as officers or directors, or were members of any of the Defendants

or any other entity that is deemed to be an Excluded Party pursuant to parts (a) and (b) hereof during the period of 2007 to the present. The Proof of Claim Form (defined in paragraph 26 below) will require each Potentially Eligible Claimant (defined in paragraph 24 below) to certify that they are not an Excluded Party.

20. “Filing Deadline” shall mean the date established in accordance with this Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be postmarked, or received by the Distribution Agent, if not sent by U.S. Mail, to avoid the barring of any rights to participate in any distribution from the Distribution Fund. Subject to certain extensions provided for in this Plan, the Filing Deadline shall be ninety (90) days from the initial mailing of the Notice Packet.

21. “Net Available Distribution Fund” shall mean the Distribution Fund, plus any accrued interest, less any taxes, and less the fees and expenses of the Tax Administrator and/or Distribution Agent that may be assessed against the Distribution Fund.

22. “Notice Packet” shall mean a packet that will be mailed to Potentially Eligible Claimants, which shall include, at a minimum, a notice to Potentially Eligible Claimants of their potential right to participate in the distribution of the Distribution Fund and their obligation to file a Proof of Claim Form in order to participate, along with a Proof of Claim Form.

23. “Plan of Allocation” refers to the provisions in paragraphs 55 and 56, which describe the methodology used to calculate a Recognized Claim for an Eligible Claimant.

24. “Potentially Eligible Claimant” shall mean any person or entity identified by the Distribution Agent as having a possible claim to recover from the Net Available Distribution Fund under this Plan or a person or entity asserting that he, she, or it has possible claims to

recovery from the Net Available Distribution Fund under this Plan.

25. “Projected Minimum Recovery” shall mean the amount an Eligible Claimant would recover if all Eligible Claimants submitted claims that sum to the total issued amount of the BOAMS Trust.

26. “Proof of Claim Form” shall mean the form designed by the Distribution Agent for the filing of a claim in accordance with the terms of this Plan. The form shall require, at a minimum, sufficient documentation of the Potentially Eligible Claimant’s purchases of Eligible Certificates on Eligible Purchase Dates.

27. “Recognized Claim” shall be the Eligible Claimant’s compensable allocation amount calculated pursuant to the methodology of the Plan of Allocation set forth at paragraphs 55 and 56 of this Plan.

28. “Response to Cure Notice” shall mean the notice sent by the Distribution Agent to a Potentially Eligible Claimant who attempted to cure a deficiency informing that either (1) their claim remains deficient in one or more ways, the deadline to cure deficiencies has passed, and they are not eligible to receive a distribution payment; or (2) their claim has been accepted, stating their accepted investment amount. The latter response will also advise the Eligible Claimant that the distribution payment amount will be determined at a later date pursuant to paragraphs 55-56 below, and will provide the estimated amount of their Projected Minimum Recovery. This notice will be sent within thirty (30) days of the deadline to cure deficiencies.

29. “Request for Reconsideration” shall mean an Eligible Claimant’s dispute of their accepted investment amount. Subject to certain extensions provided for in this Plan, the deadline to file such request shall be thirty (30) days from the date of the Claim Determination Notice.

30. “Summary Notice” shall mean the notice published in print media pursuant to



paragraph 41(e) below. Such Notice (the text of which shall be approved by Commission staff) shall include, at a minimum, a statement that the Distribution Fund was established for the benefit of investors who purchased Eligible Certificates on Eligible Purchase Dates, the means of obtaining a Notice Packet, and the Filing Deadline.

31. “Tax Administrator” shall mean Miller Kaplan Arase LLP f/k/a Damasco & Associates LLP, the Tax Administrator appointed in this action.

**C. Allocation of the Distribution Fund Amongst Eligible Claimants**

32. The Net Available Distribution Fund shall be distributed to Eligible Claimants as provided under the terms of this Plan.

33. The Net Available Distribution Fund shall be distributed on a *pro rata* basis, as provide for in the Plan of Allocation set forth in paragraphs 55 and 56 of this Plan.

**D. Administration of the Claims Procedure**

General Administration Provisions

34. The Distribution Agent shall oversee the administration of the claims, procedures, and distribution as provided in this Plan. The Distribution Agent shall review the claims of Potentially Eligible Claimants and make determinations under the criteria established herein as to the eligibility of claimants to recover monies and the amount of money to be distributed from the Net Available Distribution Fund to each Eligible Claimant.

35. Any claim asserted by a Potentially Eligible Claimant shall be in writing and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence that the Distribution Agent deems necessary or appropriate, including, but not limited to, if available, account statements and trade confirmations.

36. The recipient of Eligible Certificates as a gift, inheritance, devise, operation of

law, or acquired through an exchange of other Eligible Certificates shall be eligible to file a Proof of Claim Form and participate in the distribution of the Distribution Fund only to the extent the particular donor or decedent as the actual purchaser of Eligible Certificates would have been eligible. The recipient of Eligible Certificates on Eligible Purchase Dates by gift, inheritance, devise, operation of law or, acquired through an exchange of other Eligible Certificates shall not otherwise be eligible to file a Proof of Claim with respect to such certificates, and shall not be deemed the assignee of any claim relating to the purchase of such certificates unless specifically so provided in the instrument of gift or assignment. However, the donee and the donor may not both make a claim with regard to the same Eligible Certificates. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

37. Regarding claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and for which such claims are properly made by the custodian or fiduciary of the retirement plan and not by the retirement plan's participants, the Distribution Agent shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of retirement plan participants and the number of shares owned by each retirement plan participant, if that information is known to the Distribution Agent or provided to the Distribution Agent. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner consistent with its fiduciary duties and the account or retirement plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Eligible Claimants, the Distribution Agent shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information

required for such a distribution is known to or provided to the Distribution Agent prior to the Filing Deadline.

38. The Distribution Agent shall take reasonable and appropriate steps to distribute the Distribution Fund according to this Plan. The Distribution Agent will inform Commission staff of any changes needed to this Plan. Upon approval by Commission staff, the Distribution Agent may implement immaterial changes to this Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Court approval is required prior to implementation by amending this Plan.

39. The Distribution Agent may extend any procedural deadline contained in this Plan for good cause shown, if agreed upon by Commission staff in writing and posted on the Distribution Fund website described in paragraph 41(f).

Identification of and Notice to Potentially Eligible Claimants

40. The Commission staff has provided the Distribution Agent with a list of the names and addresses of Potentially Eligible Claimants who purchased interests in the BOAMS Trust in the initial offering and a list of Potentially Eligible Claimants who held interests in the BOAMS Trust on August 5, 2013.

41. Within thirty (30) days of the Court's order approving this Plan, the Distribution Agent shall:

- a. Design a Notice Packet, which shall be submitted to Commission staff for review and approval;
- b. Create a mailing and claim database of the Potentially Eligible Claimants provided by Commission staff as described in paragraph 40 above;
- c. To the extent the Distribution Agent is able to locate contact information for the

Potentially Eligible Claimants included on the lists provided by the Commission staff, the Distribution Agent will contact each Potentially Eligible Claimant to alert them to the approval of this Plan and to obtain an email address to which the Notice Packet will be sent;

- d. Email or mail by United States First Class Mail, if an email address is not available, a Notice Packet to each Potentially Eligible Claimant;
  - e. Publish a copy of a Summary Notice, approved by Commission staff, on a single occasion in the *Investor's Business Weekly* and disseminate the Summary Notice via PRNewsire once within seven (7) days of the date of the mailing of Notice Packets to Potentially Eligible Claimants;
  - f. Establish and maintain a website, [www.BOAMortgageObligations.com](http://www.BOAMortgageObligations.com), dedicated to the Distribution Fund from which Potentially Eligible Claimants may obtain a copy of the Plan, the Notice Packet and other relevant documents;
  - g. Provide a copy of the Plan to Commission staff for posting to the Information for Harmed Investors page of SEC.gov and establishing a link to the Distribution Fund's website; and
  - h. Establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information about the Distribution Fund.
42. On an on-going basis, after the first Notice Packet is emailed or mailed, but before the Filing Deadline, the Distribution Agent shall continue to supply the Notice Packet to Potentially Eligible Claimants who contact the Distribution Agent requesting a copy via mail, phone or email.
43. For those Notice Packets that are sent by email, but which are returned as

undeliverable, the Distribution Agent will mail a copy of the Notice Packet to the Potentially Eligible Claimant.

44. For those Notice Packets that were mailed and are returned as undeliverable by the U.S. Postal Service, the Distribution Agent shall attempt to locate an updated address for the Potentially Eligible Claimant through the U.S. Postal Service NCOA database and/or any other commercially reasonable method and shall immediately re-mail any returned undelivered mail for which the Distribution Agent has obtained a forwarding address.

45. Unless extended by the Court or pursuant to paragraph 46 below, the claims period shall be no more than ninety (90) days from the earliest date of mailing or emailing of Notice Packets to Potentially Eligible Claimants.

46. To avoid being barred from asserting a claim, on or before the Filing Deadline, each Potentially Eligible Claimant must submit to the Distribution Agent a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The Distribution Agent may extend the Filing Deadline for one or more Potentially Eligible Claimants for good cause shown, with approval by Commission staff, in which event such extension shall constitute the Filing Deadline for such Potentially Eligible Claimants. Such decisions of the Distribution Agent and Commission staff are final and not subject to challenge. The burden shall be upon the Potentially Eligible Claimant to ensure that his, her, or its Proof of Claim Form has been postmarked or received by the Distribution Agent, if not sent by U.S. Mail, on or before the Filing Deadline.

Review of Claims, and Notification of Claims Determination, Including Notice of Deficient Claims and Opportunity to Cure

47. The Distribution Agent shall review each Proof of Claim Form received to determine the validity and amount of each Potentially Eligible Claimant's claim, together with

any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of its claim, and that it qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

48. The Distribution Agent shall provide to each Potentially Eligible Claimant whose claim is deficient, in whole or in part, a Claim Deficiency Notice setting forth the reason(s) why the claim is deficient and instructions on how to cure the deficiency.

49. Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have thirty (30) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice. Within thirty (30) days of the deadline to cure, the Distribution Agent will send a Response to Cure Notice to each Potentially Eligible Claimant who attempted to cure their deficiency.

50. A Potentially Eligible Claimant who has failed to file an appropriate Proof of Claim Form in a timely manner, or who has failed to cure a deficiency identified in a Claim Deficiency Notice, in a timely manner, is not permitted to object to the barring or denial of his, her, or its claim on the basis that:

- a. The Distribution Agent failed to properly email or mail, or that such Potentially Eligible Claimant failed to receive, a copy of the Notice Packet, Proof of Claim Form, Claim Deficiency Notice, or the Claim Determination Notice;
- b. The Distribution Agent failed to record properly the receipt of an initial Proof of Claim Form, or a revised Proof of Claim Form to cure deficiencies, or the

requisite supporting documentation; or

- c. A Potentially Eligible Claimant's name and/or proper contact information was not properly recorded in the Distribution Agent's records.

51. For the Proof of Claim Forms that are accepted on their initial submission, the Distribution Agent shall send the Eligible Claimant a Claim Determination Notice informing them of their accepted investment amount. Any Eligible Claimant who objects to their accepted investment amount must so advise the Distribution Agent in writing with a Request for Reconsideration within thirty (30) days of the date of the Claim Determination Notice. The Distribution Agent shall notify the Eligible Claimant in writing of the decision within thirty (30) days from the receipt of the Request for Reconsideration.

52. All claimants have the burden of providing the Distribution Agent with any changes to his, her or its name, email address, or mailing address.

53. After the Distribution Agent has completed the process of analyzing the claims and determining the amounts to be distributed as provided in the Plan, and prior to the distribution of funds from the Net Available Distribution Fund, in consultation with Commission staff, the Distribution Agent may engage an independent, third-party firm, acceptable to the Commission, to perform a set of agreed upon tasks, review a statistically significant sample of claims, and ensure accurate and comprehensive application of the Plan of Allocation. The Distribution Agent shall provide the Commission staff with the results of that review together with any written analysis or reports related to the review, and, upon request, shall make the firm available to the Commission to respond to questions concerning the review.

54. All determinations made by the Distribution Agent in accordance with this Plan shall be final.

### Plan of Allocation

55. Calculations will be made for all Eligible Claimants on a *pro rata* basis determined by the Eligible Claimant's investment in the BOAMS Trust divided by the sum of all Eligible Claimants' investments in the BOAMS Trust. For example, if Eligible Claimant A has investments in Eligible Certificates in the BOAMS Trust equal to 5% of the dollar value of all the investments in Eligible Certificates by all Eligible Claimants in the BOAMS Trust, the calculation amount for Eligible Claimant A would be 5% of the Net Available Distribution Fund.

56. In the event that the claims submitted by Eligible Claimants is such that an Eligible Claimant would receive a recovery greatly in excess of his, her or its Projected Minimum Recovery, the Distribution Agent, with the agreement of the Commission staff, may use discretion in determining the amount of the Recognized Claims. Discretion will not be applied to any Eligible Claimant's Recognized Claim such that his, her or its distribution payment will be less than the Projected Minimum Recovery.

### Provisions for the Tax Administrator

57. The Distribution Fund is a "Qualified Settlement Fund" within the meaning of the regulations issued under Section 468B (g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- a. obtaining a taxpayer identification number;
- b. timely requesting funds necessary for the timely payment of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and



- c. fulfilling any information reporting or withholding requirements required for distributions from the Net Available Distribution Fund.

58. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

Procedures for Distributing the Distribution Fund

59. The Distribution Agent shall distribute the Net Available Distribution Fund to all Eligible Claimants only after all timely submitted Proof of Claim Forms have been processed and all Potentially Eligible Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above.

60. Within sixty (60) days after the deadline to send Response to Cure Notices and responses to Requests for Reconsideration, the Distribution Agent shall prepare a list of Eligible Claimants and their Recognized Claims (the “Payment File”). The Recognized Claim specified will have already taken into account reserves for taxes, as requested by the Tax Administrator and approved by Commission staff.

61. The Distribution Agent will also provide a “reasonable assurances letter” to the Commission staff, representing that the Payment File: (a) was compiled in accordance with this Plan; (b) is accurate as to Eligible Claimants’ names, addresses, and Recognized Claims; and (c) provides all information necessary to make distribution payments to each Eligible Claimant.

62. Upon receipt of the Payment File and reasonable assurances letter, the Commission staff will seek an order from the Court to disburse the funds identified in the Payment File in accordance with the provisions of this Plan. Upon issuance of an order to disburse by the Court, Commission staff will direct the transfer of funds to the “Escrow

Account.” The Distribution Agent shall then distribute the funds to Eligible Claimants as provided for in this Plan. Every effort will be made to distribute the funds within eighteen (18) months of Plan approval.

63. Prior to disbursement of the Net Available Distribution Fund, the Distribution Agent will establish account(s) described in the following paragraph at a United States commercial bank (the “Bank”), acceptable to the Commission staff.

64. The Distribution Agent shall establish with the Bank an Escrow Account pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the Commission staff, in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund as defined in paragraph 57. The Distribution Agent shall also establish with the Bank a separate “Deposit Account” (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding distribution payments to be distributed to Eligible Claimants by the Distribution Agent pursuant to this Plan. The name of each account shall be in the following form: Bank of America Distribution Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *In the Matter of Securities and Exchange Commission v. Bank of America, N.A., et al.*, Civil Action No. 3:13-cv-447 (W.D.N.C.).

65. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, and tax obligations, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds

registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States government. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

66. The Distribution Agent shall deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with Commission staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Deposit Accounts.

67. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All Distribution Fund checks presented for payment or electronic transfer will be subject to “positive pay” controls (*e.g.*, check number and check amount) before they are honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

68. All payments to Eligible Claimants shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after ninety (90) days; and (d) contact information for the Distribution Agent, to be used in the event of any questions regarding the distribution. Any such information letter or other mailing to recipients characterizing their distributions shall be submitted to the Commission staff for review and approval. Distribution

checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from a Distribution Fund established by the Court to compensate investors for harm as a result of securities law violations.

69. The Distribution Agent, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any Orders issued by the Court, and/or any investor information provided by Commission staff.

70. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant is not intended to be a release of an Eligible Claimant's rights and claims against any party.

71. All checks will bear a stale date of ninety (90) days from the date of the check. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. An Eligible Claimant's claim will be extinguished if he, she or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Distribution Fund. If a check reissue has been requested before the stale date, such request is governed by paragraph 73 below.

#### Returned or Un-Cashed Checks

72. The Distribution Agent shall use its best efforts to make use of reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Claimants whose checks are returned the Distribution Agent as undeliverable by the U.S. Postal Service. Where new address information becomes available, the Distribution Agent shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than ninety (90) days after the initial mailing of the original check), the check shall be voided and the Distribution

Agent shall instruct the issuing financial institution to stop payment on such check.

73. The Distribution Agent shall reissue checks to Eligible Claimants upon the receipt of a valid written request from an Eligible Claimant. In cases where an Eligible Claimant is unable to endorse a distribution check as written (*e.g.*, name change as a result of divorce or Eligible Claimant is deceased), and the Eligible Claimant or its lawful representative requests the reissuance of a distribution check under a different name, the Distribution Agent will request, and must receive, documentation supporting the change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If such change request is properly documented, the Distribution Agent will issue an appropriately redrawn check to the requesting party. Such reissued checks will be void either thirty (30) days after re-issuance or ninety (90) days after the issuance of the original check, whichever is later.

#### Residual Funds and Final Accounting

74. Approximately nine (9) months following initial distribution, after all taxes of the Net Available Distribution Fund have been satisfied, if there are remaining funds from uncashed checks, the Commission staff may at its discretion direct the Distribution Agent to distribute those residual funds to Eligible Claimants, if any, who filed claims with the Distribution Agent after the Filing Deadline or who were late in curing a previously rejected claim. The late Eligible Claimants will receive a distribution payment up to the Recognized Claim that would have been received if the claim had been filed on time, the amount depending on the available residual funds.

75. If any funds remain after the payment of claims that were filed late or cured after the Filing Deadline, or if no such claims exist, Commission staff may at its discretion direct the Distribution Agent to reallocate those residual funds on a *pro rata* basis for claims paid and

checks cashed to all Eligible Claimants who cashed a distribution check or received an electronic payment. In no event would an Eligible Claimant receive initial and residual distribution payments totaling more than the Recognized Claim.

76. If, after consultation between the Distribution Agent and Commission staff, a distribution described in paragraphs 74 or 75 is not deemed cost effective, the remaining funds may be transmitted to the Commission for transfer to the Treasury after all final accounting has been completed per the terms of paragraph 77.

77. Upon final distribution of the funds, the Distribution Agent shall make arrangement for the final payment of taxes and shall submit a final accounting to the Commission in a standard accounting format provided by the Commission staff. The Distribution Fund shall be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred: (a) the final accounting has been submitted and approved by the Court; (b) all taxes and fees have been paid; and (c) any remaining funds have been paid to the Commission for transfer to the Treasury.

#### Filing of Reports and Accountings

78. The Distribution Agent shall provide the Commission staff a quarterly progress report, in a format to be provided by Commission staff, within twenty (20) days after the end of every calendar quarter. Once the funds have been transferred to the Distribution Agent for distribution, the Distribution Agent will also provide a quarterly cash report, which will inform the Commission of the status of the Distribution Fund.

79. When the final distribution is completed, the Distribution Agent shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. In addition to the final report, the Distribution Agent shall submit a final

accounting to the Commission staff, as provided in paragraph 77 of all monies received, earned, spent, and distributed in connection with the administration of this Plan in a format provided by Commission staff. The Distribution Agent will shut down the toll-free number and website established specifically for the administration of the Distribution Fund and transfer any of the remaining funds to the Commission.

80. Unless the Court otherwise directs, the Distribution Agent will maintain all documents, including documents in any media, for six (6) years after the approval of the final accounting. At the end of the six year period, the documents will be transferred to the Commission or disposed of as instructed by Commission staff.

Other Rights and Powers

81. The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Distribution Fund, provided that such Institutions are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Plan.

**APPENDIX A**

<b>Eligible CUSIPs</b>
05955BAB5
05955BAE9
05955BAN9
05955BAK5
05955BAV1
05955BAF6
05955BAP4
05955BAW9
05955BAY5
05955BBC2
05955BBD0
05955BBE8
05955BAZ2
05955BBA6
05955BBB4
05955BBB4
05955BAG4
05955BAH2
05955BAQ2