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Comptroller of the Currency  
Administrator of National Banks

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Large Bank Licensing  
250 E Street, SW  
Washington, DC 20219

**CRA Decision #154**  
**December 2012**

November 19, 2012

Ms. Radhi Thayu  
Assistant General Counsel  
Bank of America, NY1-050-07-03  
50 Rockefeller Plaza  
New York, NY 10020-1605

Re: Application to Merge Bank of America Rhode Island, National Association, Providence, Rhode Island, into Bank of America, National Association, Charlotte, North Carolina  
Application Control Number: 2012-ML-02-0005

Application to Merge Bank of America Oregon, National Association, Portland, Oregon, into Bank of America, National Association, Charlotte, North Carolina  
Application Control Number: 2012-ML-02-0006

Dear Ms. Thayu:

The Office of the Comptroller of the Currency (OCC) hereby approves the applications submitted by Bank of America, National Association, Charlotte, North Carolina (BANA), to merge with (i) Bank of America Rhode Island, National Association, Providence, Rhode Island (BANA RI), and (ii) Bank of America Oregon, National Association, Portland, Oregon (BANA OR), for the reasons and subject to the requirements set forth herein. BANA will be the surviving institution. These approvals are granted after a thorough evaluation of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the applications and by the applicants' representatives during the application process.

### **Background**

BANA, BANA RI, and BANA OR are national bank subsidiaries of Bank of America Corporation, a financial holding company headquartered in Charlotte, North Carolina. BANA has its main office in Charlotte, North Carolina, and branches in 35 states, including Rhode Island and Oregon, and in the District of Columbia. BANA is a full service national bank that provides consumer and commercial banking services across the United States and

internationally. BANA RI and BANA OR serve primarily as funding vehicles for BANA. All three banks are insured by the Federal Deposit Insurance Corporation.

BANA RI has its main office in Providence, Rhode Island. BANA OR has its main office in Portland, Oregon. Neither bank has any branches or any operating subsidiaries. Upon consummation of the merger, BANA will retain its own main office and branches. BANA will not retain the main offices of BANA RI or BANA OR as branches.

### **Legal Authority for the Mergers**

BANA has applied to the OCC for approval to merge with BANA RI and BANA OR, under BANA's charter and title, pursuant to 12 U.S.C. §§ 215a and 1828(c). Twelve U.S.C. § 215a permits, with OCC approval, one or more national banks or one or more state banks located in the same state to merge into a national bank located within the same state under the charter of the receiving national bank. The OCC has long held the position that a bank is located in a state for purposes of 12 U.S.C. § 215a if it has its main office or a branch office in the state. BANA RI's main office is located in Rhode Island, and BANA maintains branches in Rhode Island. BANA OR's main office is located in Oregon, and BANA maintains branches in Oregon. Therefore, BANA and BANA RI are national banks located in the same state, as are BANA and BANA OR. Therefore, the mergers of BANA RI and BANA OR into BANA are permissible under 12 U.S.C. § 215a.

### **Bank Merger Act**

The OCC reviewed the proposed merger transactions under the criteria of the Bank Merger Act, 12 U.S.C § 1828(c), and applicable OCC regulations and policies. Under the Bank Merger Act, the OCC generally may not approve a merger that would substantially lessen competition. The Bank Merger Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. 12 U.S.C. § 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 U.S.C. § 1828(c)(11). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 U.S.C. § 1828(c)(5). The OCC considered these factors and found them consistent with approval of this application.

### **Community Reinvestment Act**

The Community Reinvestment Act ("CRA") requires the OCC to take into account the records of the institutions' performance in helping to meet the credit needs of their communities, including low- and moderate-income ("LMI") neighborhoods when evaluating applications under the Bank Merger Act.<sup>1</sup> As discussed below, CRA considerations are consistent with approval.

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<sup>1</sup> 12 U.S.C. § 2903; 12 C.F.R. § 25.29.

## Public Comments

The OCC received a comment letter dated September 21, 2012, and supplemented on October 1, 2012, from the Hawaii Fair Lending Coalition (“HFLC”). The HFLC states that the Bank of America organization has not fulfilled its \$150 million commitment with respect to residential mortgage loans to native Hawaiians for housing on Hawaiian Home Lands in coordination with the Department of Hawaiian Home Lands (“DHHL program”).<sup>2</sup> The DHHL program was developed by Bank of America, FSB, Portland, Oregon, in connection with its acquisition of Liberty Bank, Honolulu, Hawaii. The commenter states that the DHHL program was subject to a condition imposed by the Office of Thrift Supervision (“OTS”) as part of its approval of the Bank of America, FSB-Liberty Bank merger on May 31, 1994, and is enforceable by the OCC as successor to OTS.<sup>3</sup>

The record is not entirely clear as to whether the DHHL program was subject to one of the conditions that the OTS imposed as part of its 1994 approval.<sup>4</sup> However, even if the DHHL program was covered by one of the conditions, such conditions are no longer in effect. Bank of America, FSB was merged into an affiliate in 1995, at which time that charter ceased to exist and the conditions to which it was subject ceased to be in effect. While the Bank of America organization subsequent to the merger continued to refer to the “\$150 million commitment” with respect to the DHHL program, such commitment is considered a third-party pledge, commitment, or agreement made by a bank to its community that is not enforceable by the OCC. As a result, the OCC will not assess whether the goal has been met. The Bank of America organization states that it has fulfilled its commitment concerning the \$150 million DHHL program and provided an October 3, 2007 letter from the Department of Hawaiian Home Lands acknowledging that the commitment had been met.<sup>5</sup>

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<sup>2</sup> In its September 21, 2012 comment letter, HFLC represents that the Hawaiian Homes Commission, which the commenter has indicated oversees the Department of Hawaiian Home Lands, provides its full support to HFLC’s efforts to negotiate a formal settlement of the commitment with Bank of America. As support for this representation, HFLC included a May 3, 2012 letter to HFLC from the Chairman of the Hawaiian Homes Commission.

<sup>3</sup> HFLC also represents that a similar condition was imposed by the Board of Governors of the Federal Reserve System (Board) as part of its approval of the acquisition of Liberty Bank by BankAmerica Corporation and as part of its approval of later transactions involving the Bank of America organization. However, the Orders of the Board do not reflect that the \$150 million commitment was a condition of the Board’s decision. See, for example, Order of the Board of Governors of the Federal Reserve System approving the application by Bank of America Corporation, Charlotte, North Carolina, to merge with FleetBoston Financial Corporation, Boston, Massachusetts (March 8, 2004). In this Order, the Board states that such commitment “was not a commitment to the Board and it is not enforceable by the Board” and that “the Board views the enforceability of such third-party pledges, commitments, or agreements as matters outside the CRA.”

<sup>4</sup> The relevant condition required that Bank of America, FSB use “its best efforts...” to implement CRA-related and minority-related programs.

<sup>5</sup> In addition, the Bank of America organization has not had a retail presence in Hawaii since 1997.

BANA, the applicant with respect to the current merger applications, is rated “Outstanding” for CRA, based on an examination as of March 31, 2009. BANA RI, which was designated as a wholesale bank in 2009, has not been examined for CRA.<sup>6</sup> BANA OR is a banker’s bank and, as such, is exempt from CRA.<sup>7</sup> Accordingly, CRA considerations are consistent with approval.

### **Consummation Requirements**

This approval is granted based on our understanding that other applicable regulatory approvals, non-objections, or waivers with respect to the proposed transactions will have been received prior to the consummation of the transactions.

With respect to the mergers, please ensure that you have submitted the following prior to your desired consummation date:

1. A Secretary’s Certificate for each institution certifying that a majority of each bank’s board of directors approved the merger.
2. Executed merger agreements and, if necessary, the amended Articles of Association for the resulting bank.
3. A Secretary’s Certificate from each institution certifying that shareholder approvals have been obtained, if required.

If the transactions have not been consummated within twelve months from the approval date, the approval will automatically terminate unless the OCC grants an extension of time.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The OCC may modify, suspend or rescind this decision if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

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<sup>6</sup> The OCC designated BANA RI as a wholesale bank on October 27, 2009. For purposes of the CRA, a wholesale bank is a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. 12 C.F.R. § 25.12(x).

<sup>7</sup> Under OCC regulations, certain special purpose banks, such as banker’s banks, are exempt from CRA obligation.” 12 C.F.R. § 25.11(c)(3).

If you have any questions regarding this letter, you may contact David Reilly at (202) 874-4588 or by e-mail at [David.Reilly@occ.treas.gov](mailto:David.Reilly@occ.treas.gov). Please include the application control number(s) on any correspondence related to these filings.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Deputy Comptroller, Licensing