

**IN THE MATTER OF THE SECURITIES LEGISLATION OF  
ONTARIO, BRITISH COLUMBIA, SASKATCHEWAN AND ALBERTA**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF  
BANK OF AMERICA CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the **'Decision Maker'**) in each of Ontario, British Columbia, Saskatchewan and Alberta (the **"Jurisdictions"**) has received an application from Bank of America Corporation (**"Bank of America"** or the **"Company"**) for a decision pursuant to the securities legislation of the Jurisdictions (the **"Legislation"**) that: (i) the dealer registration requirement contained in the Legislation (the **"Registration Requirement"**) and the prospectus requirement contained in the Legislation (the **"Prospectus Requirement"**) (the Registration Requirement and the Prospectus Requirement are, together, the **"Registration and Prospectus Requirements"**) will not apply to certain trades in securities of Bank of America made in connection with the Bank of America 2002 Associates Stock Option Plan (the **"Plan"**); (ii) the Registration Requirement will not apply to first trades of shares (**"Shares"**) acquired under the Plan executed on an exchange or market outside of Canada; and (iii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, taking up and paying for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, bid financing, identical consideration and collateral benefits together with the requirement to file a reporting form within 10 days of an exempt issuer bid and pay a related fee (the **'Issuer Bid Requirements'**) will not apply to certain acquisitions by the Company of Shares pursuant to the Plan in each of the Jurisdictions;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the **"System"**), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS**, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

**AND WHEREAS** Bank of America has represented to the Decision Makers as follows:

1. Bank of America is presently a corporation in good standing incorporated under the laws of the State of Delaware. It is registered with the Securities and Exchange Commission ("SEC") in the United States under the United States Securities Exchange Act of 1934 (the "Exchange Act") and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g3-2 made thereunder. Bank of America and affiliates of Bank of America ("Bank of America Affiliates")(Bank of America and Bank of America Affiliates are, collectively, the "Bank of America Companies") provide a diversified range of banking and non-banking financial services and products in the U.S. and in selected international markets. Bank of America's head office is located in North Carolina.
2. The authorized share capital of Bank of America consists of 5,000,000,000 shares of common stock ("Shares") and 100,000,000 shares of preferred stock ("**Preferred Shares**"), of which 1,536,219,076 Shares and 1,483,324 Preferred Shares were issued and outstanding as of March 1, 2002.
3. The Shares are listed on the New York Stock Exchange (the "**NYSE**"). Bank of America is not a reporting issuer in any of the Jurisdictions and has no present intention of becoming a reporting issuer in any of the Jurisdictions. The majority of Bank of America's directors reside outside of Canada.
4. Bank of America Canada is a wholly-owned, indirect subsidiary of Bank of America, and was incorporated pursuant to the *Bank Act* (Canada) as a Schedule II Foreign Bank Subsidiary ("**Bank of America Canada**"). Bank of America Canada is not a reporting issuer in any of the Jurisdictions and has no present intention of becoming a reporting issuer in any of the Jurisdictions.
5. The Plan is administered by the Corporate Personnel Executive of Bank of America (the "**Plan Administrator**").
6. Bank of America intends to use the services of one or more agents / brokers ("**Agents**") under the Plan. The current Agent for the Plan is Salomon Smith Barney Inc. The current Agent is not registered to conduct retail trades in the Jurisdictions and, if replaced, or if additional Agents are appointed, such replacement Agents or additional Agents are not expected to be so registered in the Jurisdictions. The current Agent is, and Replacement Agents and or additional Agents will be, registered under applicable U.S. securities or banking legislation to trade in securities, if required under such legislation, and will be authorized by Bank of America to provide services under the Plan.
7. The Agent's role in the Plan may include: (a) assisting with the administration of the Plan, including record-keeping functions; (b) facilitating the exercise of Options (as defined below) granted under the Plan (including cashless and stock-swap exercises) to the extent that they are exercisable for Shares; (c) facilitating the issuance of Shares; (d) facilitating the cancellation and surrender of Awards (as defined below) as permitted under the Plan; (e) holding Shares issued under the Plan on behalf of Participants (as defined below), Former Participants (as defined below) and Permitted Transferees (as defined below); (f) facilitating the

- resale of Shares issued in connection with the Plan; and (g) facilitating the mechanisms as set out in the Plan for the payment of withholding taxes.
8. The Shares issued under the Plan may be original issue Shares, treasury Shares or Shares purchased in the open market or otherwise.
  9. All necessary securities filings have been made in the U.S. in order to offer the Plan to Participants resident in the U.S.
  10. Stock options ("**Options**") and stock appreciation rights ("**SARs**") (Options and SARs are, collectively, "**Awards**") may be offered under the Plan. Awards may be granted to employees of the Bank of America Companies eligible to participate in the Plan ("**Participants**").
  11. As of December 7, 2001, there were three hundred and thirty four (334) Participants in Canada eligible to receive Awards under the Plan: two hundred ninety-six (296) Participants resident in Ontario; thirteen (13) Participants resident in British Columbia; ten (10) Participants resident in Alberta; one (1) Participant resident in Saskatchewan; and fourteen (14) Participants resident in Québec.
  12. The purpose of the Plan is to advance the interests of Bank of America by giving employees a stake in the Corporation's future growth, thereby improving such employees' long-term incentives and aligning their interests with those of Bank of America's shareholders.
  13. Participants will not be induced to purchase Shares by expectation of employment or continued employment.
  14. Subject to adjustment as described in the Plan, Awards covering a maximum of 55,000,000 Shares will be available under the Plan.
  15. The Shares offered under the Plan have been registered with the SEC under the U.S. *Securities Act of 1933*, as amended.
  16. Following the termination of a Participant's relationship with the Bank of America Companies for reasons of disability, retirement, termination, change of control or any other reason ("**Former Participants**"), and on the death of a Participant where Awards have been transferred by will or pursuant to the laws of intestacy to a designated beneficiary ("**Permitted Transferees**"), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plan ("**Post-Termination Rights**"). Post-Termination Rights may include, among other things, the right of a Former Participant or Permitted Transferee to exercise Options for a period determined in accordance with the Plan, the right to sell Shares acquired under the Plan through the Agent, and the right to acquire Shares in certain circumstances. Post-Termination Rights will only be available where the right to receive them was earned by a Participant while the Participant had a relationship with Bank of America. Awards are otherwise non-transferable.

17. The resale of Shares acquired under the Plan may be made by Participants, Former Participants or Permitted Transferees through the Agent.
18. As there is no market for the Shares in Canada and none is expected to develop, it is expected that the resale by Participants, Former Participants and Permitted Transferees of the Shares acquired under the Plan will be effected through the NYSE.
19. As of March 25, 2002, Canadian shareholders did not own, directly or indirectly, more than 10% of the issued and outstanding Shares and did not represent in number more than 10% of the shareholders of the Company. If at any time during the currency of the Plan Canadian shareholders of the Company hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or if such shareholders constitute more than 10% of all shareholders of the Company, the Company will apply to the relevant Jurisdiction for an order with respect to further trades to and by Participants, Former Participants, Permitted Transferees in that Jurisdiction in respect of the Shares acquired under the Plan.
20. The Option exercise price (the "**Option Price**") for each Share covered by an Option shall be the Closing Price (as such term is defined in the Plan) thereof on the date of the grant of such Option (the "**Grant Date**"). The term of each Option will be fixed by the Plan Administrator.
21. The Plan Administrator will establish procedures governing the exercise of Options. Generally, in order to exercise an Option, an eligible Participant, Former Participant or Permitted Transferee participating in the Plan must submit to Bank of America or to the Agent a written notice of exercise identifying the Option and number of Shares being exercised, together with full payment for the Shares.
22. Although the Plan does not prescribe specific methods of exercise, a number of different methods are expected to be available to Participants, Former Participants and Permitted Transferees to satisfy the Closing Price, such methods to be specified in the exercise request. The methods expected to be available are the following:
  - (a) a regular Option exercise, in which case the Option holder will deliver the full Option Price and applicable withholding taxes and transaction fees (collectively, the "Exercise Costs") in cash to the Agent or to Bank of America at the time of exercise. As soon as practicable thereafter, Bank of America will deliver the Shares to the Option holder or to the Agent on the Option holder's behalf;

- (b) if permitted by the Plan Administrator, an Option exercise and sale of all (Shares being purchased through the Option exercise (“Cashless for Cash Exercise”). If the Option holder requests a Cashless for Cash Exercise, the Agent will sell all of the Shares underlying the Option being exercised as soon as practicable and, upon settlement of the trade, transfer to Bank of America from the proceeds of the sale an amount equal to the Option Price and withholding taxes payable for the Shares purchased. As soon as practicable thereafter, the proceeds from the sale of the Shares (less the Exercise Costs) will be delivered to the Option holder;
  - (c) if permitted by the Plan Administrator, an Option exercise and sale of a sufficient number of Shares to cover the Exercise Costs of the Shares being purchased through the Option exercise, with the remainder of the Shares to be issued to the Option holder (“Cashless for Stock Exercise”). If the Option holder requests a Cashless for Stock Exercise, the Agent will sell the applicable number of Shares to satisfy the Exercise Costs as soon as practicable and, upon settlement of the trade, transfer to Bank of America an amount equal to the Option Price and withholding taxes for the Shares purchased. As soon as practicable thereafter, the remaining Shares will be delivered to the Option holder or the Agent on his or her behalf; provided, however, that the Option holder will receive cash in lieu of any fractional Shares;
  - (d) if permitted by the Plan Administrator, an Option exercise and transfer of Shares already owned by the Option holder having a Fair Market Value equal to the Exercise Costs (“**Stock-Swap Exercises**”). If the Option holder requests a Stock-Swap Exercise, the Option holder must deliver to the Agent Shares owned by the Option holder having an aggregate Fair Market Value equal to the Exercise Costs. As soon as practicable thereafter, the applicable number of Shares will be delivered to the Agent on behalf of the Option holder; and
  - (e) in any other form of legal consideration that may be acceptable to the Plan Administrator.
23. An SAR shall confer on its holder the right to receive a payment from the Company, upon exercise, equal to the product of (i) the difference between the Closing Price (as defined in the Plan) of a Share on the date of exercise and the Closing Price of a Share on the Grant Date of the SAR and (ii) the number of Shares with respect to which the SAR is exercised. SARs are subject to the terms of the Plan and shall be settled in cash, unless the Plan Administrator determines that settlement should be in Shares.
24. Bank of America shall have the right to deduct applicable taxes from any Option or SAR payment or to withhold at the time of delivery of cash or vesting of Shares under the Plan, an appropriate amount of cash or Shares or a combination thereof for a payment of taxes required by law, or to take such other

action as may be necessary in the opinion of Bank of America or the Plan Administrator to satisfy all obligations for the withholding of such taxes ("**Share Withholding Exercises**"). If Shares are used to satisfy the withholding of tax, the Shares will be valued based on the Shares' fair market value (determined in accordance with the rules of the Plan) when the tax withholding is required to be made.

25. A prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plan will be delivered to each Participant who is eligible to participate in the Plan. The annual reports, proxy materials and other materials Bank of America provides to its U.S. shareholders will be provided to Participants resident in the Jurisdictions who acquire and retain Shares under the Plan at the same time and in the same manner as such documents would be provided to U.S. shareholders.
26. Pursuant to the Plan, the acquisition of Shares by the Company in the following circumstances may constitute an "issuer bid:" Stock Swap Exercises and Share Withholding Exercises.
27. The issuer bid exemptions in the Legislation may not be available for such acquisitions by the Company since such acquisitions may occur at a price that is not calculated in accordance with the "market price," as that term is defined in the Legislation and may be made from Permitted Transferees.
28. The Legislation of all of the Jurisdictions does not contain exemptions from the Prospectus and Registration Requirements for all the intended trades in Awards under the Plans.
29. When the Agents sell Shares on behalf of Participants, Former Participants and Permitted Transferees, the Agents, Participants, Former Participants and Permitted Transferees may not be able to rely upon the exemptions from the Registration Requirement contained in the Legislation of the Jurisdictions.

**AND WHEREAS** pursuant to the System, this Decision Document evidences the decision of each Decision Maker (collectively, the "**Decision**");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

**THE DECISION** of the Decision Makers under the Legislation is that:

- (a) the Registration and Prospectus Requirements shall not apply to any trade or distribution of Awards made in connection with the Plan, including trades or distributions involving Bank of America or its affiliates, the Agent, Participants, Former Participants or Permitted Transferees, provided that the first trade in Shares acquired under the Plan pursuant to this Decision in a Jurisdiction shall be deemed a distribution to the public under the Legislation of such Jurisdiction

unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied;

- (b) the first trade by Participants, Former Participants or Permitted Transferees in Shares acquired pursuant to the Plan, including first trades effected through the Agent shall not be subject to the Registration Requirement provided that conditions in subsection 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied; and
- (c) the Issuer Bid Requirements shall not apply to the acquisition by Bank of America of Awards and or Shares from Participants, Former Participants or Permitted Transferees in connection with the Plan provided such acquisitions are made in accordance with the provisions of the Plan.

**DATED** August 27<sup>th</sup>, 2002.

“R. W. Davis”

“H. Lorne Morphy”

## **Headnote**

MRRS – Relief from the registration and prospectus requirements for issuance of securities by foreign issuer to Canadian employees and former employees pursuant to an employee stock option plan – Relief from issuer bid requirements for acquisition by foreign issuer of securities in connection with exercise mechanism under plan – Issuer with *de minimis* presence in Canada.

## **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am. 25(1), 35(1)12(iii), 35(1)(17), 53(1), 72(1)(f)(iii), 72(1)(k), 74(1), 93(3)(d) and 104(2)(c).

## **Applicable Ontario Rules**

Rule 45-503 Trades to Employees, Executives and Consultants, ss. 2.2, 2.4, 3.3 and 3.5.

## **Applicable Instrument**

Multilateral Instrument 45-102 Resale of Securities, s. 2.14(1).