



Bank of America Corporation  
Legal Department  
NC1-002-29-01  
101 South Tryon Street  
Charlotte, NC 28255

September 15, 2008

BY ELECTRONIC MAIL

Mr. Robert E. Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, DC 20429  
Attn: RIN 3064-AD26  
[comments@fdic.gov](mailto:comments@fdic.gov)

Re: Proposed Regulations regarding Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure

Dear Madams and Sirs:

Bank of America Corporation (“Bank of America”) appreciates the opportunity to comment on the proposed regulations of the Federal Deposit Insurance Corporation (the “FDIC”) relating to the FDIC’s processes to enable the resolution of a large bank failure.<sup>1</sup> Bank of America, with over \$1.8 trillion in total assets and over \$800 billion in worldwide deposits, operates the largest and most diverse banking network in the United States with full-service consumer and commercial operations in 33 states and the District of Columbia. Bank of America, through its subsidiary banks, operates over 6,100 retail branch locations and over 18,700 ATMs.

The FDIC has requested information and comments relating to disclosures to customers concerning automated overnight sweep arrangements in light of the FDIC’s recent adoption of new rules that would govern the administration of a failure of a large bank.

There are many different types of sweeps and different banks offer and administer products in different ways. It is therefore difficult to universalize requirements for disclosures to customers of terms and conditions, risks and what the applicable treatment of sweep products would be in the event of a bank failure. Bank of America therefore cautions the FDIC not to impose overly specific requirements that could raise costs to banks and unduly restrain the ability of banks to manage their products. Any guidelines recommended by the FDIC regarding disclosures should be flexible and permit banks to exercise appropriate discretion to communicate with customers in a way that best matches the bank’s products, processes and customer expectations.

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<sup>1</sup> Interim rule with request for comment, 73 Fed. Reg. 41170 (July 17, 2008).

Bank of America offers a variety of products to satisfy customer needs. For purposes of this letter, we are focusing on prearranged, automated overnight sweep arrangements with commercial customers, which represent the primary products that would be impacted by the FDIC's new rules. Bank of America's sweep product gives the customer options to sweep funds from the customer's domestic deposit account at the close of business each day into a variety of investment vehicles, including Eurodollar deposits, securities repurchase agreements, money market mutual funds and fed funds (for financial institution clients only).

Each customer desiring a sweep arrangement is required to sign a service agreement setting forth the specific terms and conditions relating to the sweep service and the investment vehicle selected by the customer. Bank of America has a customized investment selection form that describes the particular terms and conditions applicable to each investment vehicle. Both the service agreement and investment selection form include specific, clear and prominent disclosures stating that the funds that are invested are not deposits, are not insured or guaranteed by the FDIC (or any other United States Government agency) and are at risk for a loss of principal. These documents give appropriate detail about the sweep product and potential risks. Bank of America's disclosures are consistent with the way in which the product is in fact managed, including how it is reflected on applicable financial reports of the bank. Bank of America does not give additional periodic disclosures in account statements or otherwise relating to such risks unless a customer changes investment options. Given that Bank of America's customer base that obtain these products are typically large and sophisticated corporate customers, Bank of America believes that this level of disclosure is appropriate and adequate. In addition to the above disclosures, Bank of America includes appropriate disclosures of these risks in its marketing materials relating to these sweep investments.

Bank of America understands and agrees with the notion that customers need clear disclosure of the terms of their products and the associated risks. We believe, however, that the FDIC should not be overly prescriptive as to the form, content or timing of appropriate disclosures. A one-size-fits-all type of model disclosure would seem unworkable in this context. Product terms and conditions vary, as do processes of different banks. The FDIC's own rules drawing a distinction between internal and external sweeps further complicate matters because disclosures and risks would change depending upon the FDIC's characterization of a particular product. Additionally, some risks to customers are uncertain and would be in the discretion of the FDIC. For example, the new FDIC rules contemplate holds to be placed by the bank on investments in internal sweeps. Whether a customer gets access to their investment and in what amount is in the control of the FDIC and would depend upon facts and circumstances. Based on this, it would not be possible to advise customers in advance of whether and to what extent their swept funds will be available in the event of a bank failure. The FDIC's rules are appropriately broad, but the result is to make it very difficult to specifically articulate to a customer exactly how the FDIC would treat their product upon a bank failure because there are many variables to that equation.

Bank of America also requests that the FDIC weigh the costs and benefits of specific or periodic disclosures. Any change in disclosures imposes a cost to banks. A requirement to give periodic statements or other disclosures to customers, repeating what is already in service agreements,

would impose further costs with little added benefit. There is also the risk, particularly in the current market climate, that excessive focus and discussion about what would happen if a bank were to fail may have the unintended result of unnecessarily frightening customers with the perception that the risk of a particular bank failure is higher than is in fact the case and thereby potentially fueling irrational decision making by customers. Bank of America sees little incremental benefit to customers in more robust disclosures than are already in place.

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Bank of America appreciates the opportunity to comment on the FDIC's proposed regulations, and we thank you for your consideration of our comments.

Sincerely,

Phillip A. Wertz  
Assistant General Counsel  
Bank of America Corporation