DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 12, 2013

Ms. Robin M. Bergen
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006

Re: In the Matter of Harding Advisory, LLC (NY-8306);
In the Matter of NIR Capital Management, LLC (NY-8382);
In the Matter of 250 Capital, LLC (NY-8424)
Bank of America Corporation – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Ms. Bergen:

This is in response to your letter dated October 18, 2013, written on behalf of Bank of America Corporation (Company) and its subsidiary Merrill Lynch, Pierce, Fenner & Smith Incorporation (MLPFS) constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry on December 12, 2013, of a Commission Order (Order) pursuant to Section 8A of the Securities Act and Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 naming MLPFS as a respondent. The Order requires that, among other things, MLPFS cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act.

Based on the facts and representations in your letter, and assuming the Company and MLPFS comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) of the Securities Act and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

/s/

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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October 18, 2013

BY HAND AND ELECTRONIC MAIL

Mary J. Kosterlitz, Esq.
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U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: In the Matter of Harding Advisory, LLC (NY-8306);
In the Matter of NIR Capital Management, LLC (NY-8382);
In the Matter of 250 Capital, LLC (NY-8424)

Dear Ms. Kosterlitz:

We submit this letter on behalf of our client, Bank of America Corporation ("BAC"), a reporting company registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in connection with a settlement between Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), a wholly owned subsidiary of BAC, and the U.S. Securities and Exchange Commission (the "Commission") in investigations by the Commission relating to the offer and sale by MLPFS of three collateralized debt obligations ("CDOs") in 2006 and 2007.

BAC hereby seeks a determination by the Commission that it will not be deemed an "ineligible issuer" under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act"), for any purpose under the securities laws and the rules thereunder, including but not limited to the definition of "well-known seasoned issuer" ("WKSI"), as a result of the Order (as defined below). BAC respectfully requests that the requested determination be made effective upon entry of the Order. We understand that the Division of Enforcement does not object to the Commission providing the requested determination.

BACKGROUND

The Staff of the Division of Enforcement (the "Enforcement Staff") has engaged in settlement discussions with MLPFS in connection with the above-captioned investigations. As a result of these discussions, the Enforcement Staff and MLPFS have reached an agreement in principle to settle the investigations (as described below), and MLPFS has submitted an offer of settlement to be presented to the Commission. In its offer, MLPFS has agreed to consent to the entry of an administrative order (the "Order"), without admitting or denying the findings contained therein (except as to jurisdiction, which are admitted solely for purposes of the proceedings).

In the Order, the Commission will make findings that (1) the disclosure for Octans I CDO Ltd., a CDO underwritten by MLPFS that closed in 2006, contained a material misstatement by stating that the collateral manager had selected assets in the portfolio on closing without informing investors that a third party had a contractual right to object to collateral selected by the collateral manager prior to the CDO's closing and had a role in collateral selection; (2) the disclosure for Norma CDO I Ltd., a CDO underwritten by MLPFS that closed in 2007, contained a material misstatement by stating that the collateral manager had selected assets in the portfolio on closing without informing investors that a third party had a role in collateral selection; and (3) MLPFS, in connection with Auriga CDO Ltd., a CDO underwritten by MLPFS that closed in 2006, did not record 68 trades at the time that MLPFS and the collateral manager agreed to the trades. In the Order, the Commission will find that MLPFS violated Sections 17(a)(2) and (3) of the Securities Act and Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(2) thereunder, and will order MLPFS to cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(2) thereunder.

DISCUSSION

In 2005, the Commission revised the registration, communications and offering processes under the Securities Act.[1] As part of these 2005 securities offering reform ("SOR") amendments, the Commission added the WKSI as a new category of issuer. The revisions defined a WKSI as, among other things, an issuer that is not subject to ineligible issuer status.

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[1] Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,933, 70 Fed. Reg. 44,722 (Aug. 3, 2005) (the "SOR Adopting Release").

The Commission also permitted, under Rules 164 and 433 under the Securities Act, the use of free-writing prospectuses by issuers that are not deemed ineligible issuers.

Rule 405 under the Securities Act deems an issuer ineligible when, among other things: "Within the past three years . . . the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that . . . prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . . ." Rule 405 recognizes, however, that such a determination should not be automatic. It authorizes the Commission to determine "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer." The Commission has delegated authority to the Division of Corporation Finance to make such a determination. *See* 17 C.F.R. § 200.30-1.

Under Rule 405, BAC may be deemed to be an "ineligible issuer" because BAC (as the parent of MLPFS) is the subject of an administrative order arising out of a governmental action that, among other things, prohibits future violations of Sections 17(a)(2) and (3) of the Securities Act and Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(2) thereunder. If BAC is deemed an ineligible issuer, BAC would be precluded, for a period of three years from entry of the Order, from qualifying as a WKSI and benefiting from automatic shelf registration and other provisions in the SOR. BAC relies on securities offerings as its primary funding source in addition to deposits and, as does many of its peer firms, relies on the shelf registration process as a critical means to access U.S. capital markets. The loss of WKSI status could therefore potentially have significant negative consequences on BAC and its shareholders.

BAC respectfully requests that the Commission determine that it is not necessary that BAC be considered an ineligible issuer, within the meaning of Rule 405, as the Order does not relate to BAC's disclosures in its own filings with the Commission and does not allege fraud in connection with BAC's offering of its own securities.

In light of these considerations, we believe BAC has shown good cause that it should not be deemed an ineligible issuer under Rule 405 upon entry of the Order and respectfully request the Commission to make that determination.

Please do not hesitate to contact me at (202) 974-1514 should you have any questions regarding this request.

Very truly yours,

Robin M. Bergen

cc: Tony M. Frouge, Esq.
Elisabeth L. Goot, Esq.
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