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Global Wealth & Investment Mgmt.

BY ELECTRONIC MAIL

December 20, 2010

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Proposed Rule, Temporary Rule Regarding Principal Trades with Certain Advisory Clients,  
File No. S7-23-07

Dear Ms. Murphy:

Bank of America Corporation<sup>1</sup> appreciates the opportunity to comment on the Securities and Exchange Commission's proposal to amend temporary rule 206(3)-3T under the Investment Advisers Act of 1940 (the "Advisers Act") to extend the date on which the rule would sunset from December 31, 2010 to December 31, 2012 (the "Proposal"). Rule 206(3)-3T establishes an alternative means for investment advisers who also are registered with the Commission as broker-dealers to meet the requirements of Section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. We commend the Commission for taking the concerns of the industry and the interests of investors into consideration in making this Proposal. Bank of America Corporation supports the Commission's proposal to amend rule 206(3)-3T to postpone the expiration of the rule until December 31, 2012.

Bank of America, through its wholly-owned subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated<sup>2</sup> ("Merrill Lynch"), currently engages in principal transactions pursuant to rule 206(3)-3T when doing so gives Merrill Lynch's clients access to an investment opportunity or transaction execution that might not otherwise be available to them in the agency market. Thus, our ability to act in a principal capacity provides substantial benefits to our clients, including the ability to access securities of limited availability and to sell securities held in their accounts at competitive market prices.

If the Commission were to permit rule 206(3)-3T to expire on December 31, 2010, Merrill Lynch and other firms currently relying on Rule 203(3)-3T would have to comply with the requirements of Section 206(3) by providing trade-by-trade written disclosure to each nondiscretionary advisory client

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<sup>1</sup> Bank of America Corporation is one of the world's largest financial institutions, serving its clients with a full range of banking, investing, asset management and other financial and risk management products and services. It is among the world's leading wealth management companies. Bank of America Corporation stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange.

<sup>2</sup> Merrill Lynch, Pierce, Fenner & Smith Incorporated is a registered broker-dealer and investment adviser, and a wholly-owned subsidiary of Bank of America Corporation.

with whom the firm sought to engage in a principal transaction. This written disclosure requirement would act as an operational barrier to our ability to engage in principal trades with our clients, especially if the transaction involved securities of limited availability. Because such securities often are purchased and sold through electronic communications networks that operate rapidly, the opportunity to act on a favorable price may be lost by the time an adviser would be able to prepare and deliver a written disclosure to the client. In addition, if rule 206(3)-3T were to expire on December 31, 2010 Merrill Lynch and other firms relying on the rule would be required to make substantial changes to our disclosure documents, client agreements, procedures, and technical systems at substantial expense.

For the above mentioned reasons, Merrill Lynch also urges the Commission to consider a permanent rule that would allow firms to continue acting in a principal capacity in transactions with certain of their advisory clients. We anticipate that the industry will have similar concerns in December 2012 as the new proposed expiration date of Rule 206(3)-3T approaches.

In conclusion, we commend the Commission on its proposal to postpone the expiration date of Rule 206(3)-3T to December 31, 2012 and urge the Commission to consider a permanent solution that would allow firms to continue engaging in principal transactions. We believe that Rule 206(3)-3T provides substantial benefits and more than adequate protection to clients in nondiscretionary advisory accounts.

Sincerely,



R. Scott Henderson

cc: Chairman Mary L. Schapiro  
Commissioner Luis A. Aguilar  
Commissioner Kathleen L. Casey  
Commissioner Troy A. Paredes  
Commissioner Elisse B. Walter