



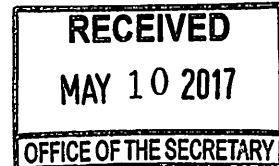
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

JUDITH WEINSTOCK
TELEPHONE: (212) 336-9078
Weinstockj@sec.gov

May 8, 2017

By Email (alj@sec.gov)

The Honorable Jason S. Patil
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557



Re: In the Matter of Donald F. ("Jay") Lathen, Jr., Admin. Proc. File No. 3-17387

Dear Judge Patil:

We write to bring a matter before the Court that was recently disclosed to the Division.

Last week we received word that Respondents are continuing to submit redemption requests without full disclosure of the nature of their relationship with the Participant or with Eden Arc Capital Partners, LP (the "Fund"), and did so in derogation of an agreement they made with the Division staff to refrain from doing so.

Enclosed is a copy of a redemption letter, signed by Lathen on February 16, 2017, as well as the Form of Notice of Election to Exercise Survivor's Option, signed by Lathen on March 13, 2017. The Court will recognize the form of redemption letter as being the one adopted by Lathen in December 2015 (Div. Ex. 417) that includes the following additional, but still inadequate, disclosure:

Please be advised that Eden Arc Capital Partners, a Delaware limited partnership, provided financing for the above-referenced account. In addition, [the deceased] and I entered into a written agreement governing the account.¹

With his redemption letter, Lathen included a signed "Form of Notice of Election to Exercise Survivor's Option," by which he "represent[ed]" that "the deceased was the beneficial owner of the [notes] at the date of his or her death," had held the notes as "a joint tenant," and that he, Lathen, was the "surviving joint owner."

¹ Roger Begelman of Goldman Sachs Bank testified that that disclosure told the issuer nothing about the substance of the agreements. (Division's Proposed Findings of Fact ¶ 415.) Disclosure that there are agreements will not substitute for disclosure of the material terms of those agreements, as the Commission has held. In re Richmark Capital Corp., Rel. No. 33-8333, 2003 WL 22570712, at *8 (SEC Nov. 7, 2003), aff'd, 86 F. App'x 744 (5th Cir. 2004).

Hon. Jason S. Patil

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Lathen submitted this redemption (and perhaps others) despite his commitment to Division staff that he would stop all redemption activity. On March 21, 2016, then-counsel for Lathen (Susan Brune) represented to me that Lathen had agreed to "halt any future redemption requests for the time being. . . revoke all requests currently in the pipeline for redemption" and "notify the brokerage firm . . . that we withdraw all pending requests." I asked Ms. Brune to notify me if Lathen resumed that activity. I received no such notification prior to learning of Lathen's February redemption.

The Division submits this letter to apprise the Court of Respondents' ongoing activity, and so that it can be added to the record in this proceeding.

Respectfully submitted,



Judith Weinstock

Enclosures

cc: Harlan Protass, Esq.
Paul Hugel, Esq.
Christina Corcoran, Esq.
(via email)

CSD DALLAS
2017 APR 11 AM 10:18

Donald F. Lathen
One Penn Plaze, Suite 3671
New York, NY 10119
212-786-7414
917-691-3396

February 16, 2017

Mr. Amit Chakrabarti
Wedbush Securities, Inc.
1000 Wilshire Blvd.
8th Floor, Dividend Dept.
Los Angeles, CA 90017

Re: Survivor's Option Election - Account # [REDACTED]

To Whom It May Concern:

Ms. Patricia Kleinow, a joint owner on the above-referenced account, recently passed away. As the surviving joint owner on the account, I would like to exercise the survivor's option with respect to the following position in the account. Attached is the death certificate supporting this request.

Please be advised that Eden Arc Capital Partners, a Delaware limited partnership, provided financing for the above-referenced account. In addition, Ms. Kleinow and I entered into a written agreement governing the account.

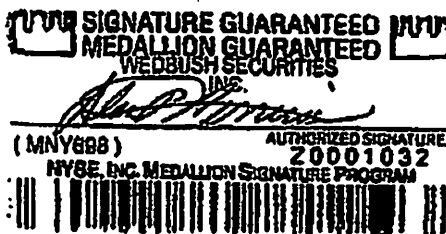
Quantity	Security Description	CUSIP
9,000	BAC INTRNTS 3.6 021540	06050WGR0

Regards,



Donald F. Lathen

Attachment



✓

**BANK OF AMERICA CORPORATION
INTERNOTES**

FORM OF NOTICE OF ELECTION TO EXERCISE SURVIVOR'S OPTION

By checking this box, the undersigned represents that: (1) it is the authorized representative of the deceased beneficial owner identified below; (2) (a) the deceased was the beneficial owner of the principal amount of Bank of America Corporation InterNotes listed below at the date of his or her death and the six month holding period has been satisfied, (b) the death of the beneficial owner listed below has occurred and (c) the undersigned representative has authority to act on behalf of the deceased beneficial owner; and (3) subject to the aggregate limitation on the amount of Bank of America Corporation InterNotes which may be tendered in any calendar year, it hereby elects to tender the principal amount of Bank of America Corporation InterNotes set forth below for repayment by Bank of America Corporation for a price equal to 100% (or such lesser amount as may be accepted for repayment) of the principal amount of the beneficial interest of the deceased owner plus accrued interest to the date of repayment.

The deceased beneficial owner held the principal amount of Bank of America Corporation InterNotes to be tendered as (check one):

a sole beneficial owner, a joint tenant or a tenant by the entirety with another or others, a tenant in common with a spouse or an individual entitled to substantially all of the beneficial interest.

a tenant in common with another (other than a spouse). If applicable please provide the amount of interest held by the deceased beneficial owner. \$ _____

Full name of deceased beneficial owner (please attach death certificate):

PATRICIA KLEINNOW

If applicable, full name of the nominee of the deceased beneficial owner (please attach a certificate attesting to the deceased's ownership of the beneficial interest in the notes):

Principal amount of Bank of America Corporation InterNotes being tendered for repayment (amount must exceed \$1,000):

\$ 9,000 PV Cusip# 06050WGR0

Bank of America Corporation may in its sole discretion, limit the aggregate principal amount of InterNotes that may be tendered pursuant to the Survivor's Option by any single beneficial owner in any calendar year to \$250,000 or such greater amount as it may determine. Additional tender limitations and terms of acceptance are also applicable and are more fully described in the Prospectus dated January 22, 2001. The Bank of New York, as Trustee on behalf of Bank of America Corporation, has the right to reject tenders of InterNotes if a properly executed election is not submitted or if it fails to receive any tax or additional information that is required to document adherence to any conditions precedent, ownership or authority to make the election.

THIS NOTICE OF ELECTION MAY NOT BE WITHDRAWN

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**BANK OF AMERICA CORPORATION
INTERNOTES**

FORM OF NOTICE OF ELECTION TO EXERCISE SURVIVOR'S OPTION

- By checking this box, the undersigned represents that: (1) it is the authorized representative of the deceased beneficial owner identified below; (2) (a) the deceased was the beneficial owner of the principal amount of Bank of America Corporation InterNotes listed below at the date of his or her death and the six month holding period has been satisfied, (b) the death of the beneficial owner listed below has occurred and (c) the undersigned representative has authority to act on behalf of the deceased beneficial owner; and (3) subject to the aggregate limitation on the amount of Bank of America Corporation InterNotes which may be tendered in any calendar year, it hereby elects to tender the principal amount of Bank of America Corporation InterNotes set forth below for repayment by Bank of America Corporation for a price equal to 100% (or such lesser amount as may be accepted for repayment) of the principal amount of the beneficial interest of the deceased owner plus accrued interest to the date of repayment.

The deceased beneficial owner held the principal amount of Bank of America Corporation InterNotes to be tendered as (check one):

- ___ a sole beneficial owner, a joint tenant or a tenant by the entirety with another or others, a tenant in common with a spouse or an individual entitled to substantially all of the beneficial interest.
- ___ a tenant in common with another (other than a spouse). If applicable please provide the amount of interest held by the deceased beneficial owner. \$ _____

Full name of deceased beneficial owner (please attach death certificate):

PATRICIA KLEINOW

If applicable, full name of the nominee of the deceased beneficial owner (please attach a certificate attesting to the deceased's ownership of the beneficial interest in the notes):

Principal amount of Bank of America Corporation InterNotes being tendered for repayment (amount must exceed \$1,000):

\$ 9000

Bank of America Corporation may in its sole discretion, limit the aggregate principal amount of InterNotes that may be tendered pursuant to the Survivor's Option by any single beneficial owner in any calendar year to \$250,000 or such greater amount as it may determine. Additional tender limitations and terms of acceptance are also applicable and are more fully described in the Prospectus dated January 22, 2001. The Bank of New York, as Trustee on behalf of Bank of America Corporation, has the right to reject tenders of InterNotes if a properly executed election is not submitted or if it fails to receive any tax or additional information that is required to document adherence to any conditions precedent, ownership or authority to make the election.

THIS NOTICE OF ELECTION MAY NOT BE WITHDRAWN

PLEASE SIGN HERE

(Must be signed by authorized representative(s) of deceased holder. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or another person acting in a fiduciary capacity, please set forth full title.)

Signature(s) of Authorized Representative(s):

[Handwritten Signature]

SIGNATURE GUARANTEED
MEDALLION GUARANTEED
WEDBUSH SECURITIES
INC.

Dated: 3/13/17

[Handwritten Signature]
AUTHORIZED SIGNATURE
(MNY698) 20061432
NYSE INC. MEDALLION SIGNATURE PROGRAM

Name(s): Donald F. Lathen
(Please Print)

Capacity (full title): Surviving joint owner

Address: 40 Eden Ave Capital Management One Penn Plaza, Suite 3671
(Include Zip Code) NY, NY 10119

Area Code(s) and Telephone Number(s): 212-786-7414

GUARANTEE OF SIGNATURE(S)

(Must be signed by authorized representative of: (1) a member firm of a registered national securities exchange or the National Association of Securities Dealers, Inc., or (2) a commercial bank or trust company having an office or correspondent in the United States.)

Name of Firm: WEDBUSH SECURITIES INC

Authorized Signature: [Handwritten Signature]

Name: ALAN FERREIRA
(Please Print)

Title: AVP

MEDALLION VERIFICATION

Address: 1000 Wilshire Blvd., 8th Floor, Div Dept, Los Angeles CA 90017
(Include Zip Code)

Surety Limit Checked
Registry Checked ✓
Ink Checked
Verified by: [Handwritten Signature]

Area Code(s) and Telephone Number(s): 213-688-4369

Date: 4-10-2017

SIGNATURE GUARANTEED
MEDALLION GUARANTEED
WEDBUSH SECURITIES
INC.
[Handwritten Signature]
AUTHORIZED SIGNATURE
(MNY698) 20061032
NYSE INC. MEDALLION SIGNATURE PROGRAM

PSD DALLAS
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