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October 12, 2009

BY FEDEX AND ELECTRONIC MAIL

David A. Markowitz
Office of the Attorney General -- New York
120 Broadway
23rd Floor
New York, NY 10271

Re: Bank of America – Merrill Lynch

Dear Mr. Markowitz:

I write on behalf of the Bank of America Corporation ("Bank of America") in connection with your office's investigation concerning the merger of Bank of America and Merrill Lynch & Co., Inc. ("Merrill Lynch"). Thank you for taking the time to meet with us on October 6, 2008. We found the meeting to be very constructive.

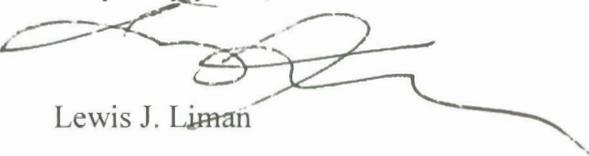
Following the meeting, and in the hope of furthering a resolution with your office, Bank of America has reconsidered its position with regard to the waiver of the attorney-client privilege and/or the attorney work product doctrine. Bank of America intends to waive these privileges with respect to the following subjects, which you have identified as pertinent: (1) the disclosures to be made in, or omitted from, the joint proxy statement issued by Bank of America and Merrill Lynch on November 3, 2008 in connection with the merger between Bank of America and Merrill Lynch, except for such documents, information, or communications that have no connection or relation to the payment by Merrill Lynch of variable incentive

compensation in 2008 or other year-end discretionary compensation for the Merrill Lynch 2008 fiscal year and/or the contractual rights of Merrill Lynch to make such payments; (2) Bank of America's consideration of whether to invoke the material adverse change clause of the Bank of America-Merrill Lynch merger agreement; (3) the public disclosure or non-disclosure of any matter relating to any potential impairment of goodwill of Merrill Lynch during its fourth quarter of its Fiscal Year 2008; (4) the public disclosure or non-disclosure, at any time prior to the closing of the merger, of the financial performance, forecasts, and/or preliminary and interim results of Merrill Lynch for its fourth quarter of Fiscal Year 2008; and (5) Bank of America's communications with the Federal Reserve Board, the United States Department of the Treasury, and other Federal officials regarding the provision and terms of federal assistance in connection with the Bank of America-Merrill Lynch merger and Bank of America's consideration of disclosure of such assistance or possible assistance. Our intention is to provide you with information and documents that will permit you to understand the contemporaneous communications with counsel during the time period that the events were taking place. We understand that the time period of interest to you is from September 12, 2008 through January 16, 2009. To be clear, we do not intend to waive any privileges or to produce any privileged documents that were created after the events at issue or that relate solely to private litigation against Bank of America or Merrill Lynch and/or their officers and directors. As we have discussed, Bank of America is involved in numerous civil proceedings, and must preserve its privileges except as indicated above.

Because Bank of America has decided to reconsider its position with respect to your investigation, it will also produce privileged information to federal regulators and to the Congress. The need to produce privileged information more broadly requires, among other things, that Bank of America obtain a court order in the context of the separate SEC litigation with which you are familiar. We are proceeding as quickly as possible so that we can waive the privilege in connection with your investigation and also promptly be in a position to produce privileged information to the others who have requested it. We presently hope and expect to be able to effect the waiver, both with respect to your Office and others, no later than Friday, October 16, 2009. While we regret the brief delay, the need for a fair and orderly process in connection with the waiver of the privilege with respect to multiple parties is unavoidable.

We look forward to meeting again with you and your office to discuss these issues and bring this matter to a close.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lewis J. Liman", with a long horizontal flourish extending to the right.

Lewis J. Liman

cc: Mark F. Pomerantz, Esq.