



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KENNETH Z. SLATER, AS MANAGER OF
KT INVESTMENTS, LLC, derivatively on
behalf of BANK OF AMERICA
CORPORATION,

Plaintiff,

-against-

KENNETH D. LEWIS, JOE L. PRICE,
WILLIAM BARNET III, FRANK P.
BRAMBLE, SR., JOHN T. COLLINS, GARY
L. COUNTRYMAN, TOMMY R. FRANKS,
CHARLES K. GIFFORD, W. STEVEN JONES,
MONICA C. LOZANO, WALTER E.
MASSEY, THOMAS J. MAY, PATRICIA E.
MITCHELL, THOMAS M. RYAN, O. TEMPLE
SLOAN, JR., MEREDITH R. SPANGLER,
ROBERT L. TILLMAN, JACQUELYN M.
WARD,

Defendants,

-and-

BANK OF AMERICA CORPORATION,

Nominal Defendant.

Civil Action No. _____

DERIVATIVE COMPLAINT

Plaintiff, Kenneth Z. Slater, as Manager of KT Investments, LLC, by his attorneys, alleges upon personal knowledge as to his own acts and upon information and belief as to all other matters, based upon the investigation conducted by counsel which included, *inter alia*, a review of Securities and Exchange Commission ("SEC") filings, news reports, analyst reports, press releases, and other publicly available documents, as follows:

NATURE OF THE CASE

1. On January 22, 2008, Bank of America Corporation (hereinafter “BAC” or the “Company”) announced that it would take a \$5.44 billion write-down for the fourth quarter of 2007. The write-down, primarily arose from the devaluation of the Company’s mortgage backed securities, resulting in a 95% decrease in fourth quarter profit from the same period one year prior.

2. The Company’s losses are related to the decrease in value in BAC’s Collateralized Debt Obligations (“CDOs”). CDOs are investment vehicles created by buying various kinds of debt, pooling them together, and using them to back the issuance of new bonds. The majority of BAC’s CDOs were backed by subprime securities.

3. According to published reports in *The Wall Street Journal* and other reputable newspapers, financial institutions, including BAC, were aware of the high-level of risk associated with subprime securities. That knowledge, however, did not stop the Company from originating and investing in an inordinate percentage of CDOs and other risky subprime investments in an effort to garner revenue and generate growth.

4. The Company’s investment policy permitted it to invest excessively in CDOs regardless of the enormous risk associated with such holdings in a breach of its fiduciary duty to its shareholders. Between January 1, 2007 and the present (the “Relevant Period”), Defendants knew or should have known that they needed to hedge the large risks associated with issuing and investing in subprime CDOs.

5. As a result of Defendants’ breaches of their fiduciary duties during the Relevant Period, the Company’s stock lost over 33% of its value, falling from a closing high of \$54.05 per share achieved three times between February 14 and 20, 2007 to a 52-week closing low of \$35.97 on January 18, 2008.

6. Plaintiff brings this action, derivatively on behalf of nominal Defendant BAC, seeking redress for the damages sustained, and to be sustained by the Company, against Defendants for unlawful actions and/or inactions, including breach of fiduciary duties, abuse of control, gross mismanagement, unjust enrichment, and negligence that occurred during the Relevant Period.

THE PARTIES

Plaintiff

7. Plaintiff, Kenneth Z. Slater, as Manager of KT Investments, LLC, is, and at all relevant times, was the owner of shares of BAC Stock. Plaintiff Slater and KT reside in Boston, Massachusetts.

Nominal Defendant

8. Nominal defendant, BAC, is a Delaware corporation with its principal executive offices located in Charlotte, North Carolina.

Defendants

9. The following defendants were and are members of the Company's Board of Directors and senior management team during the Relevant Time Period.

10. Defendant Kenneth D. Lewis ("Lewis") is the Company's Chairman, President, and Chief Executive Officer ("CEO"). Lewis has served as CEO since April 2001, President since July 2004, and Chairman since February 2005. He previously served as Chairman from April 2001 to April 2004 and President from January 1999 to April 2004. Lewis also served as Chief Operating Officer from October 1999 to April 2001. He also serves as Chairman, Chief Executive Officer, President and a director of Bank of America, N.A. He has been a director of the Corporation since 1999 and is a member of the Executive Committee.

11. Defendant William Barnet, III (“Barnet”) has served as a member of the Company’s Board of Directors since April 2004. He is a member of the Audit Committee and is considered a “financial expert” by the Company.

12. Defendant Frank P. Bramble, Sr. (“Bramble”) has served as a member of the Company’s Board of Directors since January 2006. He is a member of the Asset Quality Committee.

13. Defendant John T. Collins (“Collins”) has served as a member of the Company’s Board of Directors since April 2004. He is a member of the Audit Committee.

14. Defendant Gary L. Countryman (“Countryman”) has served as a member of the Company’s Board of Directors since April 2004. He is a member of the Executive Committee.

15. Defendant Tommy R. Franks (“Franks”) has served as a member of the Company’s Board of Directors since January 2006. He is a member of the Audit Committee.

16. Defendant Charles K. Gifford (“Gifford”) has served as a member of the Company’s Board of Directors since April 2004. Gifford served as Chairman of the Company from April 2004 until January 2005. Prior to that time, he had served as Chairman and Chief Executive Officer of FleetBoston since 2002. He also served as President and Chief Executive Officer of FleetBoston from 2001 to 2002 and President and Chief Operating Officer from 1999 to 2001. He is a member of the Executive Committee.

17. Defendant W. Steven Jones (“Jones”) has served as a member of the Company’s Board of Directors since April 2005. He is a member of the Asset Quality Committee.

18. Defendant Monica C. Lozano (“Lozano”) has served as a member of the Company’s Board of Directors since April 2006. She is a member of the Asset Quality Committee.

19. Defendant Walter E. Massey (“Massey”) has served as a member of the Company’s Board of Directors since 1998. He is a member of the Audit Committee.

20. Defendant Thomas J. May (“May”) has served as a member of the Company’s Board of Directors since April 2004. He is chair of the Audit Committee and is considered a “financial expert” by the Company.

21. Defendant Patricia E. Mitchell (“Mitchell”) has served as a member of the Company’s Board of Directors since 2001. She is a member of the Compensation and Benefits Committee and the Corporate Governance Committee.

22. Defendant Thomas M. Ryan (“Ryan”) has served as a member of the Company’s Board of Directors since April 2004. He is chair of the Corporate Governance Committee and a member of the Compensation and Benefits Committee.

23. Defendant O. Temple Sloan, Jr. (“Sloan”) has served as a member of the Company’s Board of Directors since 1996. He is the Company’s Lead Director and is chair of the Executive Committee and the Compensation and Benefits Committee and is a member of the Corporate Governance Committee.

24. Defendant Meredith R. Spangler (“Spangler”) has served as a member of the Company’s Board of Directors since 1988. She is a member of the Corporate Governance and Compensation and Benefits Committees.

25. Defendant Robert L. Tillman (“Tillman”) has served as a member of the Company’s Board of Directors since April 2005. He is a member of the Asset Quality Committee.

26. Defendant Jacquelyn M. Ward (“Ward”) has served as a member of the Company’s Board of Directors since 1994. She is chair of the Asset Quality Committee.

27. Defendant Joe L. Price (“Price”) is Chief Financial Officer for Bank of America and a member of the Company’s Risk & Capital and Management Operating Committees.

28. Because of their positions with the Company defendants Lewis, Barnet, Bramble, Collins, Countryman, Franks, Gifford, Jones, Lozano, Massey, May, Mitchell, Ryan, Sloan, Spangler, Tillman, Ward and Price had the power and authority to cause, and did cause, the Company to engage in the wrongful conduct complained of herein. These same defendants had the power and authority to control the contents of the Company’s public statements to the financial marketplace, including the false press releases and SEC filings discussed herein.

29. Defendants Lewis, Barnet, Bramble, Collins, Countryman, Franks, Gifford, Jones, Lozano, Massey, May, Mitchell, Ryan, Sloan, Spangler, Tillman, Ward and Price are sometimes collectively referred to as the “Individual Defendants”.

OBLIGATIONS OF DEFENDANTS

30. By reason of their positions as directors, officers and/or fiduciaries of the Company each of the Defendants owed BAC the duty of loyalty, good faith, due care and diligence in the management and administration of the affairs of the Company and in the use and preservation of its property and assets, and owed the duty of full and candid disclosure of all material facts related thereto. Further, the Defendants owed a duty to BAC to ensure that: (i) it operated in compliance with all applicable federal and state laws, rules, and regulations; and (ii) it did not engage in any unsafe, unsound, or illegal business practices.

31. To discharge these duties, the Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices, controls, and financial and corporate affairs of the Company. By virtue of their obligations to carry out their duties with the utmost loyalty, good faith, due care and diligence, Defendants were required, among other things, to:

(a) manage, conduct, supervise, and direct the employees, businesses and affairs of the Company in accordance with all applicable laws, rules and regulations, and the Company's charter and by-laws;

(b) neither violate nor knowingly or recklessly permit any officer, director or employee of the Company to violate applicable laws, rules and regulations and to exercise reasonable control and supervision over such officers and employees;

(c) ensure the prudence and soundness of policies and practices undertaken or proposed to be undertaken by the Company;

(d) remain informed as to how the Company, in fact, was operating, and upon receiving notice or information of unsafe, imprudent or unsound practices, to make reasonable investigation in connection therewith and to take steps to correct that condition or practice;

(e) supervise the preparation, filing and/or dissemination of any SEC filing, press releases, audits, reports or other information disseminated by the Company and to examine and evaluate any reports of examinations or investigations concerning the practices, products or conduct of officers of the Company and to make full and accurate disclosure of all material facts, concerning *inter alia*, each of the subjects and duties set forth above; and preserve and enhance the Company's reputation as befits a public corporation and to maintain public trust and confidence in the Company as a prudently managed institution fully capable of meeting its duties and obligations.

SUBSTANTIVE ALLEGATIONS

BAC's Exposure to Risky Investments in CDOs

32. "Subprime" generally refers to borrowers who do not qualify for prime interest rates on a loan due to poor credit histories. Many lenders were willing to provide loans to these

less than ideal borrowers based upon the rapidly escalating price of real estate, which would cover the cost of the loan (supposedly) should the debtor default.

33. CDO attractiveness to investors is based on the same principle. A CDO is principally valued by its over-collateralization. As such, when real estate values decrease the over-collateralization rates based on those assets also decreases.

34. Despite the risky nature of underwriting subprime backed CDOs, BAC continued to underwrite and invest in these securities despite its longstanding reputation as a conservative and cautious bank. BAC, however, has long been aware of the problems inherent in underwriting and investing in CDOs, which were largely backed by subprime mortgages. Nevertheless, its management team and directors failed to hedge these risks in the face of an increasingly volatile market. Defendants, instead, were seduced by the prospect of growth and income from CDOs.

35. When the real estate market collapsed - as a result of higher interest rates, a glut of properties, and borrowers' inability to refinance their properties due to diminished home values - borrowers defaulted at a higher rate thus affecting the over-collateralization rates on which CDOs were dependent.

36. BAC failed to inform its shareholders of the known risks of underwriting CDOs comprised of subprime assets or the prospective losses that would befall the Company and its investors in the event of a down turn in the real estate market. Moreover, when the real estate market began to deteriorate, BAC failed to disclose known exposures or set aside adequate reserves to deal with the problem because to do so would cut into the Company's profits and alert the market that the Company was dangerously exposed.

BAC's Misleading Public Statements

37. During the Relevant Period, the Defendants caused BAC to issue SEC filings that mischaracterized BAC's finances as being secure and untroubled by current market conditions.

38. On January 23, 2007, the Company issued a press release announcing its financial results for fourth quarter and year ending December 31, 2006. For the year, BAC reported an increase in net income of 28 percent to \$21.13 billion from \$16.47 billion a year earlier, which the Company claimed was a result of "both the addition of MBNA at the start of the year and organic growth in most major customer segments." Mr. Lewis commented on the results, in pertinent part, as follows:

Bank of America had another strong year in 2006. We created opportunities for our customers and clients through improved service, product innovations such as the \$0 Online Equity Trade program and Business 24/7™ for small businesses, new more convenient ATMs and excellent investment performance in our Columbia Funds. Our capital markets groups served more clients than ever before, increasing our market share in important product categories. In short, our associates are proving that when you combine listening to customers to understand their needs with our advantages of scale, innovation and execution, it creates a powerful value proposition that wins in the marketplace.

39. The Company reiterated these results in its annual statement filed on Form 10-K with the SEC on February 28, 2007.

40. On April 19, 2007, the Company issued a press release announcing its financial results for the first quarter of 2007. For the quarter, BAC reported an increase in net income of 5 percent from to \$5.26 billion from \$4.99 billion a year earlier. Mr. Lewis commented on the results, in pertinent part, as follows:

Bank of America is off to a solid start in 2007 despite a challenging operating environment. We demonstrated strong customer momentum across our lines of business; added thousands of net new checking account customers thanks to innovative products like Keep the Change™; generated double-digit loan growth and deepened relationships with business and corporate clients.

41. The Company reiterated these results in its annual statement filed on Form 10-Q with the SEC on March 31, 2007.

42. On July 19, 2007, the Company issued a press release announcing its financial results for the second quarter of 2007. For the quarter BAC reported an increase in net income of 5 percent to \$5.76 billion from \$5.48 billion a year earlier. Mr. Lewis commented on the results, in pertinent part, as follows:

Bank of America, with its diverse business model, was able to continue attractive earnings growth despite challenging headwinds. Our businesses are doing a good job of attracting new customers and expanding our relationships with existing clients. Our investments in a number of businesses such as capital markets, mortgage and services for the affluent, in addition to the equity investment gains produced in the current environment, are generating results that more than offset spread compression impacting virtually all of our businesses and the trend toward more normalized credit costs

43. Throughout the summer, the Company made no mention of its risky CDOs or its exposure to the subprime mortgage market. Defendants remained silent even as the industry was growing increasingly concerned over the subprime mortgage crisis.

44. In fact, just as companies like Merrill Lynch and BAC were preparing to take significant writedowns based on the deteriorating value of their subprime mortgage backed securities, the Company's only mention of the subprime mortgage crisis was made in a Form 10-Q, filed with the SEC on August 8, 2007, which at page 41 stated:

Certain credit markets experienced difficult conditions and volatility during the first six months of 2007. These markets continued to experience pressure into the third quarter including the well publicized sub-prime mortgage market as well as related financings. Further, in late July and early August, market uncertainty increased dramatically and further expanded to other markets (e.g., leveraged finance, collateralized debt obligations and other structured products). These conditions resulted in less liquidity, greater volatility, widening of credit spreads and a lack of price transparency. The Corporation's GCIB segment operates in these markets, either directly or indirectly, through exposures in securities, loans, derivatives and other commitments. While it is difficult to predict how long these conditions will exist and which markets, products or other businesses of the

Corporation will ultimately be affected, these factors could adversely impact the Corporation's results of operations.

In an obscure note at page 119, the company attached the above paragraph to its list of "Risk Factors."

BAC Downplays Its Exposure

45. On September 17, 2007, Defendant Price, the Company's CFO, spoke at the Bank of America Securities Investors Conference. During the conference, Price failed to mention the Company's true exposure to subprime backed CDOs. In fact, Price minimized the importance of the Company's exposure to the subprime market altogether. During the entire presentation Price mentioned subprime securities on three occasions and each time he downplayed the Company's exposure:

Consumer Real Estate, which includes both first mortgages and home equity, accounted for only 7% of the consumer and small business bank's earnings in the first half. **We have a number of initiatives in place to grow share in mortgage, and they do not, as you can imagine, involve subprime.** (Emphasis added)

We've done an enormous amount of work in the past several years to make sure were getting paid for the risks that we take. So, as most of you know, we exited the subprime loan origination business in August of 2001, and **we do not target the subprime segment.** (Emphasis added, underline in original)

There are unprecedented dislocations occurring in the credit markets. These range from:

- leveraged finance, where Bank of America is a player; to subprime, where we have some exposure on the capital markets side; to the commercial paper market, where certain investment activities are also affected;
- To the decoupling of typical correlations in various markets.
- The flight to quality has had an impact on any number of credit activities by denying liquidity even when there is no apparent problem with the underlying assets. A good example is prime

jumbo loans, which market participants would routinely sell, but where investors are now wary due to being burned in other consumer real estate-related areas.

46. On October 18, 2007, the Company issued a press release announcing its financial results for the third quarter of 2007. The Company reported that third quarter net income declined 32% to \$3.70 billion from \$5.42 billion a year earlier and that diluted earnings fell 31% from \$1.18 per share to \$0.82 per share. Defendant Lewis, commenting on the results, stated in pertinent part as follows:

While the significant dislocations in the capital markets have hurt most participants, we are still very disappointed in our third quarter performance. However, the majority of our businesses experienced solid revenue growth as sales momentum continued, demonstrating the value of our diverse business mix. We continued to invest in our businesses for the long-term and to introduce innovative products and services to differentiate Bank of America in the marketplace. While we cannot predict the near-term, I am confident that such innovation and execution combined with the advantages of scale and reach are the formula for future success.

Structured Products, which includes asset-backed and residential mortgage-backed securities, commercial mortgages, collateralized debt obligations (CDOs) and structured credit trading had a net revenue loss of \$527 million. The loss arose from lower investment banking fees and trading declines principally due to the same conditions affecting Credit Products.

47. Irrespective of the negative results, however, there was no mention of the Company's exposure to the subprime market. Moreover, there was only a cursory discussion of the firm's CDO related exposure. Indeed, only the latter comment mentions CDOs and it only vaguely ties the Company's CDO products to the rapidly deteriorating subprime mortgage market.

48. On November 9, 2007, the Company filed these results on Form 10-Q filed with the SEC. The filing went on to include the following previously excluded discussion on CDOs:

Collateralized debt obligations (CDOs) are special purpose entities (SPEs) that hold diversified pools of fixed income securities. They issue multiple tranches of debt securities, including commercial paper, and equity securities. The Corporation receives fees for structuring the CDOs and/or placing debt securities with third party investors.

At September 30, 2007 and December 31, 2006, the Corporation provided liquidity support in the form of written put options on \$10.0 billion and \$2.1 billion of commercial paper issued by CDOs including \$3.2 billion issued by the consolidated CDO at September 30, 2007. The commercial paper is the most senior class of securities issued by the CDOs and benefits from the subordination of all other securities, including AAA-rated securities, issued by the CDOs. The Corporation is obligated under the written put options to provide funding to the CDOs by purchasing the commercial paper at predetermined contractual yields in the event of a severe disruption in the short-term funding market. See Note 11 – Commitments and Contingencies to the Consolidated Financial Statements for more information on the written put options. These written put options are recorded as derivatives on the Consolidated Balance Sheet and are carried at fair value with changes in fair value recorded in trading account profits (losses). Derivative activity related to these entities is included in Note 4 – Derivatives to the Consolidated Financial Statements. The assets of the consolidated conduit are recorded in trading account assets.

The Corporation also administers a CDO conduit that obtains funds by issuing commercial paper to third party investors. The conduit held \$5.5 billion of assets at both September 30, 2007 and December 31, 2006 consisting of super senior tranches of debt securities issued by other CDOs. These securities benefit from over collateralization exceeding the amount that would be required for a AAA rating. The Corporation provides liquidity support equal to the amount of assets in this conduit which obligates it to purchase the commercial paper at a predetermined contractual yield in the event of a severe disruption in the short-term funding market.

Net revenues earned from fees associated with these liquidity commitments were \$2 million and \$5 million for the three and nine months ended September 30, 2007, and \$1 million and \$2 million for the three and nine months ended September 30, 2006.

BAC is Forced to Write Down a Substantial Portion of its CDO Investments

49. On November 13, 2007, Defendant Price spoke at the Merrill Lynch Financial Services Conference. During the conference, Price, for the first time, informed the public that BAC had significant exposures to subprime backed securities. Price reported, in relevant part, as follows:

Additionally, in our CDO warehouse we had approximately \$400 million in subprime backed exposure.

As you know, subsequent to September 30, the credit ratings of certain CDOs were downgraded which, among other things, helped to trigger severe dislocations in the CDO markets. As a result, many market participants have announced large writedowns.

We currently estimate a fourth quarter mark of around \$3 billion pre-tax. There is complexity and difficulty in estimating the value of these positions, especially the CDO squared structures. The estimate is sensitive to assumptions regarding borrower default and losses which is dependent on various factors, including the vintage of underlying loans and asset mix, to name a few. I might note that while we have classified these as principally supported by underlying subprime exposure, they do contain other asset classes in the collateral mix.

As market conditions change and possibly worsen there could be additional diminution in value.

50. Subsequently on December 12, 2007, Defendant Lewis presented at the Goldman Sachs Investor Conference. Mr. Lewis informed investors that the Company would have to write down a larger amount of its investments in subprime backed CDOs than previously expected. Mr. Lewis stated in pertinent as follows:

At Bank of America, we currently expect provision expense to be approximately \$3.3 billion in the fourth quarter, reflecting increased reserves of about \$1.3 billion. In round numbers, about one third of the increase is due to growth and seasoning in our consumer lending portfolios with the remaining two thirds due to deterioration principally in consumer real estate and some in small business.

As you know, the subprime crisis has created considerable dislocations in the capital markets that significantly affected the financial results at most participants in the third quarter.

The markets turned down sharply in August and then many segments appeared to be recovering during the fall. However, in the past month, the markets have turned down again and will probably remain challenging into next year.

A number of participants - including Bank of America - have forecast sizeable writedowns particularly in CDOs. Based on conditions today, we expect those writedowns will be larger than have already been reported - although obviously we won't know our final numbers until we close the fourth quarter. We will discuss those numbers on the January earnings call.

In addition, our trading revenue has been considerably depressed by the lack of business activity and widening spreads in a number of product categories.

I'm not going to go through all that Joe told you at an investor conference last month. But to summarize, we then estimated pre-tax CDO writedowns of \$3 billion, a \$300 million writedown of a mezzanine investment, \$600 million in support for cash funds and \$230 million for the Visa settlement with Amex.

While we do not make a practice of forecasting quarterly earnings, I think you certainly can assume results will again be quite disappointing.

51. As a result of Mr. Lewis' statements, the Company's stock dropped \$1.22 per share on heavy trading volume.

52. By January 18, 2008, the Company's stock had plummeted to its 52 week low of \$35.97 per share after having shed \$18.08 per share (33% of its value) since February 20, 2007.

53. On January 23, 2007, BAC issued a press release announcing its financial results for the fourth quarter of 2007. In addition to reporting a \$5.28 billion write-down in connection with its CDOs, the Company also informed the public about the rising credit risks in its portfolio and commented on the reduced quality of the investments made in 2007. Specifically, the Company said the following:

Credit quality indicators deteriorated from favorable levels experienced in 2006. Weakness in the housing and financial markets resulted in rising credit risk in some portfolios, most notably in home equity, homebuilders and small business. In addition, seasoning in recent home equity and small business vintages contributed to higher delinquencies and net losses.

Credit costs rose in the fourth quarter compared with the third quarter of 2007 and the fourth quarter of 2006 driven by additions to reserves and higher charge-offs in home equity because of weakness in the housing markets as well as continued growth and seasoning of the consumer portfolios. The increase from the fourth quarter of 2006 also was impacted by seasoning and deterioration in the small business portfolio and the absence in 2007 of commercial reserve releases experienced in 2006.

- Provision for credit losses was \$3.31 billion, up from \$2.03 billion in the third quarter of 2007, and \$1.57 billion in the fourth quarter of 2006.

- Net charge-offs were \$1.99 billion, or 0.91 percent, of total average loans and leases compared with \$1.57 billion, or 0.80 percent, in the third quarter of 2007 and \$1.42 billion, or 0.82 percent, in the fourth quarter of 2006.
- Total managed net losses were \$3.31 billion, or 1.34 percent, of total average managed loans and leases compared with \$2.84 billion, or 1.27 percent, in the third quarter of 2007 and \$2.45 billion, or 1.23 percent, in the fourth quarter of 2006.
- Nonperforming assets were \$5.95 billion, or 0.68 percent of total loans, leases and foreclosed properties, at December 31, 2007. LaSalle contributed \$1.21 billion to the year-end levels. Nonperforming assets were \$3.37 billion, or 0.43 percent, at September 30, 2007 and \$1.86 billion, or 0.26 percent, at December 31, 2006.
- The allowance for loan and lease losses was \$11.59 billion, or 1.33 percent of loans and leases measured at historical cost, at December 31, 2007. That compared with \$9.54 billion, or 1.21 percent, at September 30, 2007 and \$9.02 billion, or 1.28 percent, at December 31, 2006, which excluded LaSalle.

54. The Defendants knew or should have known the true facts about the Company's precarious position, but did not reveal them to the investing public. Indeed, the Company was more exposed to CDOs containing subprime assets than it disclosed and its statements during the Relevant Period failed to inform the market of the probable extent of write downs of BAC's CDO holdings due to the deteriorating subprime mortgage market.

BREACH OF FIDUCIARY DUTIES

55. Each of the Defendants owed BAC and the Company's shareholders fiduciary duties of loyalty, good faith and due care.

56. Each of the Defendants were and are required to act in the best interests of BAC and the Company's shareholders, and not in furtherance of their own personal interests.

57. Each of the Defendants owes to BAC and the Company's shareholders the fiduciary duty to exercise good faith and diligence in the administration of the Company's

affairs, the use and preservation of its property and assets and the highest obligations of fair dealing.

58. Each of the Defendants had a duty to promptly disseminate accurate and truthful information with regard to the Company's revenue, margins, operations, performance, management, projections and forecasts so that the market price of the Company's stock would be based on truthful and accurate information.

59. Defendants, directly and/or indirectly, engaged in reckless and wrongful acts complained of herein, including the dissemination of false and misleading information in the various public statements issued by the Company.

60. During the Relevant Period, each of the Defendants was the agent of the others and of BAC, and was at all times acting within the course and scope of such agency.

61. To discharge their duties, Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of the Company. By virtue of such duties, Defendants were required to, among other things:

- (a) Refrain from acting upon material inside corporate information to benefit themselves;
- (b) Ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the investing public;
- (c) Conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid

wasting the Company's assets, and to maximize the value of the Company's stock;

- (d) Properly and accurately guide investors and analysts to the true financial condition of the Company at any given time, including making accurate statements about the Company's financial results and prospects, and ensuring that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times;
- (e) Remain informed as to how BAC conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with federal and state securities laws; and
- (f) Ensure that the Company was operated in a diligent, honest and prudent manner in compliance with all applicable federal, state and local laws, rules and regulations.

62. Each of the Defendants, by virtue of his or her position as a director and/or officer of the Company, owed BAC and the Company's shareholders the fiduciary duties of loyalty, good faith and the exercise of due care in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets.

63. The conduct of the Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of BAC, the absence of good faith, and a reckless disregard for their duties to BAC and the Company's shareholders that each of the Defendants were aware or should have been aware posed a risk of serious injury to the Company.

64. The conduct of the Defendants who were also officers and/or directors of the Company during the Relevant Period have been ratified by the remaining Defendants who collectively comprised all of BAC's Board of Directors during the Relevant Period.

65. The Defendants breached their duties of loyalty and good faith by causing, directly or indirectly, the Company to materially misrepresent its financial results and prospects, as detailed herein, and by failing to prevent other Defendants from taking such illegal actions.

The Asset Quality and Audit Committee's Duties and Responsibilities

66. During the Relevant Period, the Asset Quality Committee and the Audit Committee were responsible for, *inter alia*, supervision and oversight to ensure that risk management practices are being followed.

67. Defendants Bramble, Jones, Lozano, Tillman, and Ward are currently members of the Asset Quality Committee. According to the Company's Annual Proxy filed on Form DEF14A with the SEC on March 19, 2007, the Asset Quality Committee is responsible for the following tasks:

- Reviewing asset quality trends and performance;
- Monitoring management's adherence to prudent and sound credit policies and practices;
- Reviewing credit concentrations, credit risk inherent in selected products and businesses, country risk and loan loss reserves;

- Reviewing adequacy of the allowance for loan and lease losses and related written policies and procedures;
- Reviewing certain market risk reports; and
- Approving credit risk policies and management disciplines as required by the Basel II accord or other regulatory requirements.

68. Accordingly, the Asset Quality Committee members were responsible for overseeing the Company's risk management. These Defendants did not fulfill this duty, therefore causing or allowing the Company to hide its true state of affairs.

69. Defendants Barnet, Collins, Franks, Massey, and May are currently members of the Audit Committee. According to the Company's Annual Proxy filed on Form DEF14A filed with the SEC on March 19, 2007, the Audit Committee is responsible for the following tasks:

- Reviewing annually the scope of the proposed internal audit, external audit and credit review activities, as well as the actual coverage of those activities;
- Discussing the contents of our annual and quarterly consolidated financial statements with management, the independent registered public accounting firm and the general auditor;
- Appointing or terminating, determining the compensation of, and evaluating the quality and independence of, the independent registered public accounting firm;
- Pre-approving the scope of services provided by and fees paid to the independent registered public accounting firm for audit, audit-related and permitted non-audit-related services;
- Overseeing the corporate audit function;
- Reviewing the scope and content of examinations of the Corporation by banking and other regulatory agencies and reporting their conclusions to the Board, including comments as to the suitability of necessary corrective action taken, and to the response made to the regulators; and

- Reviewing with management and the Corporation's General Counsel the nature and status of significant legal matters.

70. Accordingly, the Audit Committee members were responsible for overseeing the Company's affairs, including its risk management policies and ensuring that all material information was disclosed in the Company's financial statements. These Defendants did not fulfill this duty, therefore causing or allowing the Company to hide its true state of affairs.

DERIVATIVE ACTION AND DEMAND FUTILITY ALLEGATIONS

71. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress the injuries suffered, and to be suffered, by the Company as a direct result of the breach of fiduciary duty and waste of corporate assets, alleged herein. The Company is named as a nominal defendant solely in a derivative capacity.

72. Plaintiff will adequately and fairly represent the interest of the Company in enforcing and prosecuting its rights.

73. Plaintiff is and has continuously been an owner of BAC stock during the wrongful conduct alleged herein.

74. Plaintiff has not made any demand upon the Board to bring an action asserting the claims herein, for the damages suffered by BAC, since such demand would be a futile, wasteful and useless act and is therefore excused.

75. Demand is futile because a majority of the board was responsible for the wrongdoings by virtue of their positions as members of the Board of Directors.

76. Defendants Bramble, Jones, Lozano, Tillman, and Ward are currently members of the Asset Quality Committee. The Asset Quality Committee members were responsible for overseeing the Company's risk management and making sure that management was adhering to prudent and sound credit policies and practices. As described above, these board members

completely failed in this duty thus subjecting the Company to tremendous losses due to its inadequate risk controls. Accordingly, Defendants Bramble, Jones, Lozano, Tillman, and Ward are hopelessly conflicted in making any supposedly independent determination of a demand that they cause the Company to bring this action.

77. Defendants Barnet, Collins, Franks, Massey, and May are currently members of the Audit Committee. Audit Committee members were responsible for overseeing the Company's affairs, including its risk management policies and ensuring that all material information was disclosed in the Company's financial statements. As described above, these board members completely failed in this duty as the Company's financial statements did not disclose the substantial risks associated with its exposure to subprime CDOs and the Company was subject to tremendous losses due to its inadequate risk controls. Accordingly, Defendants Barnet, Collins, Franks, Massey, and May are hopelessly conflicted in making any supposedly independent determination of a demand that they cause the Company to bring this action.

78. Defendant Lewis engaged in the practice of miscommunication that hid the Company's exposure to the subprime market. As such Defendant Lewis is also hopelessly conflicted in making any supposedly independent determination of a demand that they cause the Company to bring this action are hopelessly conflicted in making any supposedly independent determination of a demand that they cause the Company to bring this action

79. Additionally, each of the Individual Defendants knew of and/or directly benefited from the wrongdoing alleged herein.

80. The Individual Defendants participated in, approved and/or permitted the wrongdoings alleged herein to occur and participated in efforts to conceal or disguise them from

BAC's stockholders or recklessly and/or negligently disregarded the wrongs and, thus, are not disinterested parties.

81. The acts complained of constitute violations of the Exchange Act and violations of fiduciary duties owed by BAC's officers and directors and these acts are incapable of ratification.

82. Each of the Individual Defendants authorized and/or permitted the false statements disseminated directly to the public or made directly to industry analysts, authorized and/or permitted the issuance of various false and misleading statements and are principal beneficiaries of the wrongdoing alleged herein, and thus could not fairly and fully prosecute such an action even upon initiation of the same.

COUNT I
DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY
(AGAINST ALL DEFENDANTS)

83. Plaintiff incorporates by reference all paragraphs above as if set forth herein.

84. Defendants owed the fiduciary duties of loyalty and good faith to BAC and its stockholders, including the duty to exercise due care and diligence in the management and administration of the affairs of the Company, and owed the duty of full and candid disclosure of all material facts thereto.

85. As fiduciaries, to discharge these duties, the Defendants were required to exercise prudent supervision over the management, policies, practices, and controls, of the financial and corporate affairs of BAC.

86. Defendants breached their fiduciary duties by overexposing the Company to CDOs based on its holdings of approximately \$5.28 billion which was recently written down. Each of the Defendants knew or should have known that they had caused the Company to

misrepresent the BAC's financial results. These actions could not have been an exercise of good faith business judgment.

87. The Defendants' breaches of their fiduciary duties have proximately caused, and will continue to cause, BAC to suffer substantial monetary damages as a result of the wrongdoing described herein, as well as further and even greater damage in the future, including damage to BAC's reputation, business and good will.

88. BAC has been directly and substantially injured by reason of the Defendants' intentional breach and/or reckless disregard of their fiduciary duties to the Company. Plaintiff, as a shareholder and representative of BAC, seeks damages and other relief for the Company, in an amount to be proven at trial.

COUNT II
DERIVATIVE CLAIM FOR RECKLESS AND GROSS MISMANAGEMENT
(AGAINST INDIVIDUAL DEFENDANTS)

89. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

90. By their actions alleged herein, Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and businesses of BAC in a manner consistent with the operations of a publicly held corporation.

91. As a direct and proximate result of Defendants' reckless and gross mismanagement and breaches of duty alleged herein, BAC has suffered substantial monetary damages, as well as further and even greater damage in the future, including damage to BAC's reputation and good will. Defendants are liable to the Company as a result of the misconduct alleged herein.

92. Plaintiff on behalf of BAC has no adequate remedy at law.

COUNT III
DERIVATIVE CLAIM FOR UNJUST ENRICHMENT
(AGAINST INDIVIDUAL DEFENDANTS)

93. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

94. By their wrongful acts and omissions, Defendants were unjustly enriched at the expense and detriment of BAC.

95. Plaintiff, as shareholder and representative of BAC, seeks restitution, damages, an order of this Court disgorging all profits, benefits and other compensation obtained by these Individual Defendants from their wrongful conduct and fiduciary breaches, and other relief for the Company, in an amount to be proven at trial.

COUNT IV
DERIVATIVE CLAIM FOR WASTE OF CORPORATE ASSETS
(AGAINST ALL DEFENDANTS)

96. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

97. By engaging in the wrongdoing alleged herein, Defendants wasted corporate assets by, among other things, failing to evaluate the risk of BAC's overexposure to the risky subprime CDO market, for which they are liable. No person acting in good faith pursuit of the Company's interests could have expose the Company to CDOs whose underlying assets were comprised of RMBS, some of which were sub-prime, in the face of crisis in the residential real estate markets.

98. As a direct and proximate result of Defendants' wrongful conduct, the Company has suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

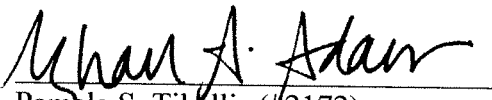
WHEREFORE, Plaintiff, on its own behalf, and derivatively on behalf of BAC, prays for judgment as follows:

- A. Determining that its suit is a proper derivative action and certifying plaintiff as an appropriate representative of BAC for said action;
- B. Declaring that each of the Individual Defendants breached his or her fiduciary duty to BAC;
- C. Directing each of the Individual Defendants to account to the BAC for all damages sustained or to be sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, waste of corporate assets and unjust enrichment;
- D. Directing each of the Individual Defendants to account to the Company for all profits obtained by the Individual Defendants by reason of the wrongs alleged herein;
- E. Requiring all Director Defendants to return to BAC all compensation paid to them during the Relevant Time Period;
- F. Ordering the Individual Defendants, and those under their supervision and control, to implement and enforce policies, practices and procedures on behalf of BAC and its stockholders that are designed to detect and prevent illegal conduct by BAC's employees and representatives;
- G. Directing each of the Individual Defendants to pay interest pre- and post-judgment at the highest rate allowable by law on the amount of damages sustained by the Company;

- H. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs and expenses; and
- I. Granting such other and further relief as the Court may deem just and proper.

Dated: March 4, 2008

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