

*Farrell v. Bank of America, N.A.*

United States Court of Appeals for the Ninth Circuit

Appeal No. 17-55847

United States District Court for the Southern District of California

Case No. 3:16-CV-00492-L-WVG

**Settlement and Release Agreement**

This Settlement and Release Agreement (“Agreement”) dated as of October 30, 2017 is entered into by Plaintiffs Joanne Farrell, Ronald Dinkins, Larice Addamo, and Tia Little (“Plaintiffs”) on behalf of the Settlement Class defined herein, and Bank of America, N.A. (“BANA”). Plaintiffs and BANA are each individually a “Party” and are collectively the “Parties.” The Parties hereby agree to the following terms in full settlement of the action titled *Farrell v. Bank of America, N.A.*, No. 3:16-CV-00492-L-WVG (S.D. Cal.) (“Action”), subject to Final Approval, as defined below, by the United States District Court for the Southern District of California (“Court”).

## **I     RECITALS**

WHEREAS, on February 25, 2016, Plaintiff Farrell filed the Action and alleges in the Complaint that the EOBC, as defined below, is a form of usurious “interest” under Sections 85 and 86 of the National Bank Act (“NBA”);

WHEREAS, on April 29, 2016, BANA moved to dismiss the Action on the grounds that overdraft fees, including the EOBC, are excluded as a matter of law from the definition of “interest” under the NBA, which motion was denied by the Court on December 19, 2016;

WHEREAS, on January 6, 2017, BANA filed a motion for certification of the Court’s order for interlocutory appeal and to stay the case pending appeal;

WHEREAS, on March 13, 2017, Plaintiff Farrell filed an unopposed motion to amend her Complaint to add Ronald Dinkins, Larice Addamo, and Tia Little as three additional named plaintiffs;

WHEREAS, on April 11, 2017, the Court granted BANA’s motion for certification of the dismissal order for interlocutory appeal and stayed the case pending resolution by the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”);

WHEREAS, on April 21, 2017, BANA filed a petition for permission to appeal the Court’s dismissal order with the Ninth Circuit;

WHEREAS, on June 14, 2017, the Ninth Circuit granted BANA’s petition for permission to appeal, and the appeal is pending as of the date of this Agreement;

WHEREAS, BANA has denied, and continues to deny, each and every claim and allegation of wrongdoing asserted in the Action, and BANA believes it would ultimately be successful in its defense of all claims asserted in the Action;

WHEREAS, BANA has nevertheless concluded that because further litigation involves risks and could be protracted and expensive, settlement of the Action is advisable;

WHEREAS, Plaintiffs, individually and on behalf of the Settlement Class as defined below, believe that the claims asserted in the Action have merit and that there is evidence to support their claims;

WHEREAS, Plaintiffs nevertheless recognize and acknowledge the expense and length of continued litigation and legal proceedings necessary to prosecute the Action through trial and through any appeals; and

WHEREAS, Plaintiffs have also, in consultation with their counsel, assessed the legal risks faced in the Action, and on the basis of that assessment believe that the Settlement set forth in this Agreement and as defined below provides substantial benefits to Plaintiffs and the Settlement Class, is fair, reasonable, and adequate, and is in the best interests of Plaintiffs and the Settlement Class.

NOW THEREFORE, the Parties agree that the Action shall be fully and finally compromised, settled, released, and dismissed with prejudice, subject to the terms and conditions of this Agreement and subject to Final Approval as set forth herein.

## **II TERMS OF THE SETTLEMENT**

### **Section 1. Definitions**

In addition to the terms defined elsewhere in this Agreement, the following capitalized terms used in this Agreement shall have the meanings specified below:

1.1 “Administrative Costs” means all out-of-pocket costs and third-party expenses of the Administrator that are associated with providing notice of the Settlement to the Settlement Class, administering and distributing the Settlement Amount to Class Members, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunications costs. Administrative Costs shall not include the Administrator’s Hourly Charges.

1.2 “Administrator” means Epiq Systems.

1.3 “Administrator’s Hourly Charges” means any fees paid to the Administrator on an hourly basis for its services in administering the Settlement, excluding Administrative Costs, printing, postage, National Change of Address Database charges, and any other costs not customarily billed by the Administrator on an hourly basis.

1.4 “Adjustments” means, collectively, the Class Representatives Service Awards, the Fee & Expense Award, and the amount of the Administrator’s Hourly Charges.

1.5 “BANA Releasees” has the meaning ascribed to it in Section 2.3(a).

1.6 “Cash Settlement Amount” has the meaning ascribed to in Section 2.2(b)(1).

1.7 “Class Counsel” means Tycko & Zavareei LLP, Kopelowitz Ostrow Ferguson Weiselberg Gilbert, Kelley Uustal, PLC, and Creed & Gowdy, P.A.

1.8 “Class Member” means a person who falls within the definition of the Settlement Class.

1.9 “Class Member Award” means an award to a Class Member of funds from the Net Cash Settlement Amount.

1.10 “Class Notices” means Exhibits B, C, and D attached hereto.

1.11 “Class Period” means the period between February 25, 2014 and December 30, 2017.

1.12 “Class Representative Service Award” has the meaning ascribed to it in Section 3.1.

1.13 “Complaint” means the complaint filed in the Action on February 25, 2016.

1.14 “Direct Deposit Payment” has the meaning ascribed to it in Section 2.6(b).

1.15 “Debt Reduction Payments” means the debt reduction payments described in Section 2.2(b)(4).

1.16 “Debt Reduction Amount” has the meaning ascribed to it in Section 2.2(b)(1).

1.17 “Effective Date” shall mean when the last of the following has occurred: (1) the day following the expiration of the deadline for appealing Final Approval if no timely appeal is filed, or (2) if an appeal of Final Approval is taken, the date upon which all appeals (including any requests for rehearing or other appellate review), as well as all further appeals therefrom (including all petitions for certiorari) have been finally resolved without material change to the Final Approval Order, as determined by BANA, and the deadline for taking any further appeals has expired such that no future appeal is possible; or (3) such date as the Parties otherwise agree in writing.

1.18 “EOBC” or, plural, “EOBCs,” means the Extended Overdrawn Balance Charge that BANA applies to a consumer checking account when that account is overdrawn by the account holder and the account remains overdrawn for five (5) or more consecutive business days, as described in the Personal Schedule of Fees, a specimen copy of which is attached as Exhibit F hereto.

1.19 “Fee & Expense Award” has the meaning ascribed to it in Section 3.2.

1.20 “Final Approval” means entry of the Final Approval Order.

1.21 “Final Approval Hearing” means the date the Court holds a hearing on Plaintiffs’ motion seeking Final Approval.

1.22 “Final Approval Order” means the document attached as Exhibit E hereto.

1.23 “National Change of Address Database” means the change of address database maintained by the United States Postal Service.

1.24 “Net Cash Settlement Amount” means the Cash Settlement Amount, less the Adjustments.

1.25 “Objection Deadline” means one-hundred twenty (120) calendar days after Preliminary Approval (or other date as ordered by the Court).

1.26 “Opt-Out Deadline” means one-hundred twenty (120) calendar days after Preliminary Approval (or other date as ordered by the Court).

1.27 “Preliminary Approval” means entry of the Preliminary Approval Order.

1.28 “Preliminary Approval Order” means the document attached as Exhibit A hereto.

1.29 “Released BANA Claims” has the meaning ascribed to it in Section 2.3(a).

1.30 “Settlement” means the settlement of the Action by the Parties and the terms thereof contemplated by this Agreement.

1.31 “Settlement Amount” means Sixty-Six Million Six-Hundred Thousand Dollars (\$66,600,000.00).

1.32 “Settlement Class” has the meaning ascribed to it in Section 2.1.

1.33 “Settlement Fund Account” means the account into which BANA will deposit the Cash Settlement Amount.

1.34 “Settlement Value” means, collectively, the Cash Settlement Amount, the Debt Reduction Amount, and the Administrative Costs.

1.35 “Taxes” shall have the meaning ascribed to it in Section 3.4.

## **Section 2. The Settlement**

### **2.1 Conditional Certification of the Settlement Class**

(a) Solely for purposes of this Settlement, the Parties agree to certification of the following Settlement Class under Fed. R. Civ. P. 23(b)(2) and (b)(3):

All holders of BANA consumer checking accounts who, during the Class Period, were assessed at least one EOBC that was not refunded.

(b) In the event that the Settlement does not receive Final Approval, or in the event the Effective Date does not occur, the Parties shall not be bound by this definition of the Settlement Class, shall not be permitted to use it as evidence or otherwise in support of any argument or position in any motion, brief, hearing, appeal, or otherwise, and BANA shall retain its right to object to the maintenance of this Action as a class action and the suitability of the Plaintiffs to serve as class representatives.

## 2.2 Settlement Benefits

### (a) Change to Business Practices

(1) Beginning on or before December 31, 2017, BANA agrees not to implement or assess EOBCs, or any equivalent fee, in connection with BANA consumer checking accounts, for a period of five (5) years, or until December 31, 2022.

(2) Nothing in Section 2.2(a) shall require BANA to violate any law or regulation. BANA's obligation to cease assessing EOBCs as provided in this section shall be lifted in the event a United States Supreme Court decision expressly holds that EOBCs or equivalent fees are not interest under the NBA; BANA's obligation will be lifted no sooner than 6 months after any such decision.

### (b) Monetary Relief

(1) Settlement Amount. BANA will provide the \$66.6 million Settlement Amount as follows:

Thirty-Seven Million Five-Hundred Thousand Dollars (\$37,500,000.00) of the Settlement Amount will be paid in cash (the "Cash Settlement Amount"),

and

Twenty-Nine Million One Hundred Thousand Dollars (\$29,100,000.00) in currently owed debt shall be reduced by BANA (the "Debt Reduction Amount").

(2) Escrow Account. Within thirty (30) calendar days of Preliminary Approval, BANA shall deposit the Cash Settlement Amount into the Settlement Fund Account, which shall be held with BANA.

(3) Calculation of Class Member Awards. Each Class Member who paid at least one EOBC that was assessed during the Class Period and not refunded or charged off shall be entitled to receive a cash payment from the Net Cash Settlement Amount. The Net Cash Settlement Amount will be divided by the number of EOBCs collectively paid by all Class Members who paid at least one EOBC during the Class Period, to yield a per-instance figure. Each Class Member Award shall equal the per-instance figure multiplied by the number of EOBCs paid by that Class Member during the Class Period. Joint accountholders shall each be entitled to their pro rata share of a single Class Member Award.

(4) Debt Reduction Payments. For Class Members who were assessed an EOBC during the Class Period, and whose accounts were closed while an EOBC was still due and owing, the Debt Reduction Amount will be used by BANA to make Debt Reduction Payments toward the outstanding balance on the account that was closed with the EOBC still due and owing in an amount up to \$35 to reflect a credit for the outstanding EOBC. If the outstanding balance exceeds \$35, the Debt Reduction Payment will be \$35. If the outstanding balance is less than \$35, the account balance will be adjusted to zero dollars. Under no circumstances will BANA be required to make any cash payments as a result of the Debt

Reduction or make Debt Reduction Payments exceeding the Debt Reduction Amount. To the extent BANA has reported the accounts to any credit bureaus, BANA will update the reporting. In the event the Debt Reduction Payment brings the account balance to zero, the reporting will be updated to state that the account was paid in full. In the event the Debt Reduction Payment does not bring the account balance to zero, the reporting will be updated only to state that a partial payment has been made on the account. No Debt Reduction Payment shall be considered an admission by any Class Member that the underlying debt is valid.

(5) For the avoidance of doubt, it is agreed by the Parties that a Class Member may qualify for relief from both the Cash Settlement Amount and Debt Reduction Amount by virtue of having paid one or more EOBCs during the Class Period that was not refunded and having been assessed at least one other EOBC during the Class Period that was still due and owing when the account was closed.

### 2.3 Releases.

(a) Class Member Release. Upon the Effective Date, Plaintiffs and each Class Member who has not opted out of the Settlement Class pursuant to the procedures set forth in Section 2.5 releases, waives, and forever discharges BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint venturers, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, insurers, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its subsidiaries and affiliates (collectively, "BANA Releasees") from any and all claims they have or may have against the BANA Releasees with respect to the assessment of EOBCs as well as (i) any claim or issue which was or could have been brought relating to EOBCs against any of the BANA Releasees in the Action and (ii) any claim that any other overdraft charge imposed by BANA during the Class Period, including but not limited to EOBCs and initial overdraft fees, constitutes usurious interest, in all cases including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses (the "Released BANA Claims").

(b) Unknown Claims. With respect to the Released BANA Claims, Plaintiffs and the Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR**

Thus, subject to and in accordance with this Agreement, even if the Plaintiffs and/or Class Members may discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released BANA Claims, Plaintiffs and each Class Member, upon entry of Final Approval of the Settlement, shall be deemed to have and by operation of the Final Approval Order, shall have, fully, finally, and forever settled and released all of the Released BANA Claims. This is true whether such claims are known or unknown, suspected, or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

(c) **Covenant Not to Sue.** Plaintiffs and the Settlement Class covenant not to sue or otherwise assert any claims for usury against BANA challenging BANA's practices with respect to overdraft fees, including EOBCs and initial overdraft item fees, including, but not limited to, any claims arising under the NBA or any other usury statute, during the period of time the changes to business practices set forth in Section 2.2(a) remain in effect, but in no case beyond December 31, 2022.

#### 2.4 Notice Procedures

(a) **Class Action Administrator.** The Administrator shall perform the duties, tasks, and responsibilities associated with providing notice and administering the Settlement. BANA shall pay all Administrative Costs. The Administrator's Hourly Charges will be paid out of the Cash Settlement Amount.

(b) **Provision of Information to Administrator.** Within fifteen (15) calendar days of Preliminary Approval, BANA will provide the Administrator with the following information, which will be kept strictly confidential between the Administrator and BANA, for each Class Member: (i) name; (ii) last known e-mail address; (iii) last known mailing address; (iv) the number of EOBCs that each Class Member paid during the Class Period, if any; (v) whether the account that incurred the EOBC remains open; (vi) if the account that incurred the EOBC no longer remains open, whether there was an EOBC due and owing at the time the account was closed; and (vii) if the account that incurred the EOBC no longer remains open, the balance remaining due and owing. The Administrator shall use the data provided by BANA to make the calculations required by the Settlement, and the Administrator shall share the calculations with Class Counsel. The Administrator shall use this information solely for the purpose of administering the Settlement.

(c) **Class Notices.** Within sixty (60) calendar days of Preliminary Approval, or by the time specified by the Court, the Administrator shall send the Class Notices in the forms attached hereto as Exhibits B, C, and D, or in such form as is approved by the Court, to the Class Members. The Administrator shall send the "Email Notice," attached hereto as Exhibit B, to all Class Members for whom BANA has provided the Notice Administrator with an e-mail address. The Administrator shall send the "Postcard Notice," attached hereto as Exhibit C, to all Class Members for whom BANA has not provided an email address and to all Class Members to whom the Administrator sent Exhibit B via email but for whom the Administrator receives notice

of an undeliverable email. Exhibit C shall be mailed after the Administrator updates mailing addresses provided by BANA with the National Change of Address database and other commercially feasible means. The Administrator shall also maintain a website containing the Complaint, the “long-form notice,” attached hereto as Exhibit D, Plaintiffs’ motion seeking Preliminary Approval, the Preliminary Approval Order, Plaintiffs’ motion seeking Final Approval, and the Final Approval Order until at least ninety (90) calendar days after Final Approval. The Administrator shall send the long-form notice by mail to any Class Member who requests a copy. It will be conclusively presumed that the intended recipients received the Class Notices if the Administrator did not receive a bounce-back message and if mailed Class Notices have not been returned to the Administrator as undeliverable within fifteen (15) calendar days of mailing.

## 2.5 Opt-Outs and Objections.

As set forth below, Class Members shall have the right to opt-out of the Settlement Class and this Settlement or to object to this Settlement.

(a) Requirements for Opting-Out. If a Class Member wishes to be excluded from the Settlement Class and this Settlement, that Class Member is required to submit to the Administrator at the website address listed in the Class Notices, a written, signed, and dated statement that he or she is opting out of the Settlement Class and understands that he or she will not receive a Class Member Award or a Debt Reduction Payment from the Settlement of the Action. To be effective, this opt-out statement (i) must be received by the Administrator by the Opt-Out Deadline, (ii) include the Class Member’s name, last four digits of his or her social security number, and BANA account number(s), and (iii) must be personally signed and dated by the Class Member(s). The Administrator will, within five (5) business days of receiving any opt-out statement, provide counsel for the Parties with a copy of the opt-out statement. The Administrator will, at least five (5) court days before the Final Approval Hearing, file copies of all opt-out statements with the Court. The Settlement Class will not include any individuals who send timely and valid opt-out statements, and individuals who opt out are not entitled to receive a Class Member Award or Debt Reduction Payment under this Settlement.

(b) Objections. Any Class Member who has not submitted a timely opt-out form and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must both file a written objection with the Court by the Objection Deadline and send that written objection to BANA’s counsel and to Class Counsel at the addresses listed below.

To be valid and considered by the Court, an objection must (i) be postmarked on or before the Objection Deadline; (ii) state each objection the Class Member is raising and the specific legal and factual bases for each objection; (iii) include proof that the individual is a member of the Settlement Class; (iv) identify, with specificity, each instance in which the Class Member or his or her counsel has objected to a class action settlement in the past five (5) years, including the caption of each case in which the objector has made such objection, and a copy of any orders or opinions related to or ruling upon the objector’s prior such objections that were issued by the trial and appellate courts in each listed case; (v) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (vi) any

and all agreements that relate to the objection or the process of objecting – whether written or verbal – between objector or objector’s counsel and any other person or entity; and (vii) be personally signed by the Class Member. All evidence and legal support a Class Member wishes to use to support an objection must be filed with the Court and sent to the Parties by the Objection Deadline.

Plaintiffs and BANA may file responses to any objections that are submitted. Any Class Member who timely files and serves an objection in accordance with this section may appear at the Final Approval Hearing, either in person or through an attorney, if the Class Member files a notice indicating that he/she wishes to appear at the Final Approval Hearing with the Clerk of Court no later than twenty (20) calendar days before the Final Approval Hearing. A Class Member who wishes to appear at the Final Approval Hearing must also send a copy of the notice indicating that he/she wishes to appear to BANA’s counsel and to Class Counsel twenty (20) calendar days before the Final Approval Hearing. Failure to adhere to the requirements of this section will bar a Class Member from being heard at the Final Approval Hearing, either individually or through an attorney, unless the Court otherwise orders.

The Parties shall have the right to take discovery, including via subpoenas *duces tecum* and depositions, from any objector.

(c) Waiver of Objections. Except for Class Members who opt-out of the Settlement Class in compliance with the foregoing, all Class Members will be deemed to be members of the Settlement Class for all purposes under this Agreement, the Final Approval Order, and the releases set forth in this Agreement and, unless they have timely asserted an objection to the Settlement, shall be deemed to have waived all objections and opposition to its fairness, reasonableness, and adequacy.

(d) No Encouragement of Objections. Neither the Parties nor any person acting on their behalf shall seek to solicit or otherwise encourage anyone to object to the Settlement or appeal from any order of the Court that is consistent with the terms of this Settlement.

## 2.6 Benefit Distribution

(a) Within ten (10) days of Final Approval, the Administrator shall provide to BANA: (1) for accounts entitled to receive Class Member Awards, a list of the Class Members who are entitled to receive Class Member Awards, along with the bank account numbers for each account entitled to receive a Class Member Award and the amount of each Class Member Award due to each eligible bank account, and (2) for accounts entitled to receive a Debt Reduction Payment, a list of such accounts, along with the bank account numbers for each account entitled to receive a Debt Reduction Payment, and the amount of the Debt Reduction Payment due to each eligible bank account. The information provided by the Administrator shall be considered conclusive as to which individuals are entitled to receive a Class Member Award or Debt Reduction Payment and as to the amount of the Class Member Award and/or Debt Reduction Payment to which each Class Member is entitled.

(b) Distribution of Class Member Awards. In the event that the accounts from which Class Members paid the EOBCs and that make the Class Members eligible for Class Member Awards remain open, the Class Member Awards will be credited via direct deposit by BANA to Class Members' BANA accounts ("Direct Deposit Payments"). The Direct Deposit Payments will be accompanied by a description on bank statements to be determined by BANA after consulting with Class Counsel. BANA shall make Direct Deposit Payments to Class Members within thirty (30) calendar days of the Effective Date. Within forty-five (45) calendar days of the Effective Date, BANA shall provide to the Administrator a list of Class Members, and corresponding account numbers, to whom BANA distributed Direct Deposit Payments and the amount of each Direct Deposit Payment.

(c) Within sixty (60) calendar days of the Effective Date, the Administrator shall send Class Member Awards from the Settlement Fund Account via check to all Class Members entitled to Class Member Awards who did not receive the entirety of the Class Member Awards to which they are entitled under this Settlement via Direct Deposit Payments. If the Class Members who are entitled to Class Member Awards are joint accountholders, the Class Member Award check shall be made payable to both accountholders.

(d) Mailing Addresses. Prior to mailing Class Member Award checks, the Administrator shall attempt to update the last known addresses of the Class Members through the National Change of Address Database or similar databases. No skip-tracing shall be done as to any checks that are returned by the postal service with no forwarding address. Class Member Award checks returned with a forwarding address shall be re-mailed to the new address within seven (7) calendar days. The Administrator shall not mail Class Member Award checks to addresses from which Class Notices were returned as undeliverable.

(e) Interest. All interest on the funds in the Settlement Fund Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Administrator. The Administrator is responsible for the payment of all taxes on interest on the funds in the Settlement Fund Account.

(f) Time for Depositing Class Member Award Checks. If a Class Member's Class Member Award check is not deposited (or cashed) within one hundred and twenty (120) calendar days after the check is mailed, (a) the check will be null and void; and (b) the Class Member will be barred from receiving a further Class Member Award under this Settlement.

(g) Distribution of Debt Reduction Payments. Within thirty (30) calendar days of the Effective Date, BANA shall make the Debt Reduction Payments as described in Section 2.2(b)(4). Within forty-five (45) calendar days of the Effective Date, the Administrator shall send notifications of such Debt Reduction Payments to each eligible Settlement Class Member, which notice shall include the amount of the Debt Reduction Payment and notification that if the Debt Reduction Payment brought the balance to zero the account will be reported as paid in full and that if the Debt Reduction Payment did not bring the balance to zero, the account will be reported as having had a partial payment made.

(h) Deceased Class Members. Any Class Member Award paid to a deceased Class Member shall be made payable to the estate of the deceased Class Member, provided that the Class Member's estate informs the Administrator of the Class Member's death at least thirty (30) calendar days before the date that Class Member Award checks are mailed and provides a death certificate confirming that the Class Member is deceased. If the Class Member's estate does not inform the Administrator of the Class Member's death at least thirty (30) calendar days before Class Member Award checks are mailed, the deceased Class Member will be barred from receiving a Class Member Award under this Settlement.

(i) Tax Obligations. The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Class Members as a result of, or that arise from, any Class Member Awards or any other term or condition of this Agreement.

(j) Tax Reporting. The Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made from the Settlement Fund Account as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations. The Parties hereto agree to cooperate with the Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this section.

(k) Reports. The Administrator shall provide the Parties with a reconciliation and accounting of the Settlement Fund Account at each of the following times: (i) no later than ten (10) calendar days after the Class Member Award checks are mailed, and (ii) no later than ten (10) calendar days after the expiration of the 120-day period for depositing Class Member Award checks.

### **Section 3. Class Representative Service Award and Class Counsel's Fee & Expense Award**

3.1 Class Representative Service Awards. Plaintiffs, through their undersigned counsel, shall each be entitled to apply to the Court for an award from the Cash Settlement Amount of up to \$5,000 for their participation in the Action and their service to the Settlement Class ("the Class Representative Service Award"). BANA shall not oppose or appeal such application that does not exceed \$5,000. The Class Representative Service Awards shall be paid from the Settlement Fund Account. BANA shall place the Class Representative Service Awards into the Settlement Fund Account within ten (10) days of the Effective Date.

3.2 Fee & Expense Award. The Parties consent to the Court appointing Class Counsel in this Action for purposes of the Settlement. Class Counsel shall be entitled to apply to the Court for an award from the Cash Settlement Amount not to exceed 25% of the Settlement Value to reimburse Class Counsel for attorneys' fees incurred in researching, preparing for, and litigating this Action, and Class Counsel may also apply for reimbursement for costs and expenses incurred in the Action ("the Fee & Expense Award"). BANA agrees not to oppose or appeal any such application that does not exceed 25% of the Settlement Value plus reimbursement for costs and expenses incurred in the Action. The Fee & Expense Award shall constitute full satisfaction of any obligation on the part of BANA to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of

Plaintiffs or the Settlement Class. The Administrator shall pay the the Fee & Expense Award to Class Counsel from the Settlement Fund Account within ten (10) days of the date the Fee & Expense Award is granted. In the event the Effective Date does not occur or the Fee & Expense Award is reduced following an appeal, Class Counsel shall repay the BANA the full amount of the Fee & Expense Award or the amount of the reduction, for which all Class Counsel shall be jointly and severally liable.

3.3 Demarcation. It is the intention of the Parties to demarcate clearly between proceeds from the Settlement in which Class Members have an interest, which may subject them to tax liability, and the Fee & Expense Award. Accordingly, the amount paid separately to Class Counsel for the Fee & Expense Award is independent of and apart from the amounts paid to Class Members, and Class Members shall at no time have any interest in the Fee & Expense Award. The Parties make no representation regarding and shall have no responsibility for the tax treatment of the Fee & Expense Award, or any other payments paid to Class Counsel or the tax treatment of any amounts paid under this Agreement.

3.4 The funds in the Settlement Fund Account shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Settlement Fund Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed upon BANA, BANA’s counsel, Plaintiffs and/or Class Counsel with respect to income earned by the Settlement Fund Account for any period during which the Settlement Fund Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund Account. BANA and BANA’s counsel and Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund Account shall indemnify and hold BANA and BANA’s counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

3.5 Residual. In the event that there is any residual in the Settlement Fund Account after the distributions required by this Agreement are completed, said funds shall in no circumstance revert to BANA. At the election of Class Counsel and counsel for BANA, and subject to the approval of the Court, the funds may be distributed to Settlement Class Members via a secondary distribution if economically feasible or through a residual *cy pres* program. Any residual secondary distribution or *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of funds to the Settlement Class Members.

#### **Section 4. Settlement Approval**

4.1 Preliminary Approval. On or before October 31, 2017, Plaintiffs will submit for the Court’s consideration a motion seeking Preliminary Approval of the Settlement and apply to the Court for entry of the Preliminary Approval Order attached as Exhibit A. In the event the Court does not enter the Preliminary Approval Order in the same form as Exhibit A, BANA has the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless BANA waives in writing its right to terminate the Agreement due to any changes or deviations from the form of the Preliminary Approval Order.

In Plaintiffs' motion seeking Preliminary Approval, Plaintiffs shall request that the Court approve the Class Notices attached at Exhibits B, C and D. The Court will ultimately determine and approve the content and form of the Class Notices to be distributed to Class Members.

The Parties further agree that in Plaintiffs' motion seeking Preliminary Approval, Plaintiffs will request that the Court enter the following schedule governing the Settlement: (i) deadline for sending the Class Notices: sixty (60) calendar days from Preliminary Approval; (ii) deadline for filing motions for Class Representative Service Award and Fee & Expense Award: one hundred (150) calendar days from Preliminary Approval; (iii) deadline for opting out or serving objections: one-hundred twenty (120) calendar days from Preliminary Approval; and (iv) Final Approval Hearing: one-hundred eighty (180) calendar days from Preliminary Approval.

4.2 Final Approval. Plaintiffs will submit for the Court's consideration, by the deadline set by the Court, the Final Approval Order attached as Exhibit E. The motion for Final Approval of this Settlement shall include a request that the Court enter the Final Approval Order and, if the Court grants Final Approval of the Settlement and incorporates the Agreement into the final judgment, that the Court dismiss this Action with prejudice, subject to the Court's continuing jurisdiction to enforce the Agreement. In the event that the Court does not enter the Final Approval Order in materially the same form as Exhibit E, as determined by BANA, BANA has the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless BANA waives in writing its right to terminate the Agreement due to any material changes or deviations from the form of the Final Approval Order. While materiality remains subject to BANA's determination in its reasonable discretion, material changes shall not include any changes to the legal reasoning or format used by the Court to justify the substantive relief sought by the Final Approval Order. In the event that the Effective Date does not come to pass, the Final Approval Order is vacated or reversed or the Settlement does not become final and binding, the Parties agree that the Court shall vacate any dismissal with prejudice.

4.3 Effect of Disapproval. If the Settlement does not receive Final Approval or the Effective Date does not come to pass, BANA shall have the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless BANA waives in writing its right to terminate the Agreement under this section. In addition, the Parties agree that if this Agreement becomes null and void, BANA shall not be prejudiced in any way from opposing class certification in the Action, and Plaintiffs and the Class Members shall not use anything in this Agreement, in any terms sheet, or in the Preliminary Approval Order or Final Approval Order to support a motion for class certification or as evidence of any wrongdoing by BANA. No Party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including but not limited to, claims or objections to class certification, or claims or defenses on the merits. Each Party reserves the right to prosecute or defend this Action in the event that this Agreement does not become final and binding.

## **Section 5. General Provisions**

5.1 Cooperation. The Parties agree that they will cooperate in good faith to effectuate and implement the terms and conditions of this Settlement.

5.2 Judicial Enforcement. If the Court enters the Final Approval Order in substantially the same form as Exhibit E to this Agreement, then the Court shall have continuing authority and jurisdiction to enforce this Agreement. The Parties shall have the authority to seek enforcement of this Agreement and any of its aspects, terms, or provisions under any appropriate mechanism, including contempt proceedings. The Parties will confer in good faith prior to seeking judicial enforcement of this Agreement.

5.3 Effect of Prior Agreements. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the Settlement of this Action, contains the final and complete terms of the Settlement of the Action and supersedes all prior agreements between the Parties regarding Settlement of the Action. The Parties agree that there are no representations, understandings, or agreements relating to the Settlement of this Action other than as set forth in this Agreement. Each Party acknowledges that it has not executed this Agreement in reliance upon any promise, statement, representation, or warranty, written or verbal, not expressly contained herein.

5.4 No Drafting Presumption. All Parties hereto have participated, through their counsel, in the drafting of this Agreement, and this Agreement shall not be construed more strictly against any one Party than the other Parties. Whenever possible, each term of this Agreement shall be interpreted in such a manner as to be valid and enforceable. Headings are for the convenience of the Parties only and are not intended to create substantive rights or obligations.

5.5 Notices. All notices to the Parties or counsel for the Parties required or desired to be given under this Agreement shall be in writing and sent by overnight mail as follows:

To Plaintiffs and the Settlement Class:

Jeffrey D. Kaniel  
Tycko & Zavareei LLP  
1828 L Street, NW  
Suite 1000  
Washington, DC 20036

Jeff Ostrow  
Kopelowitz Ostrow P.A.  
1 West Las Olas Blvd.  
Suite 500  
Fort Lauderdale, FL 33301

Bryan Gowdy  
Creed & Gowdy, P.A.  
865 May Street  
Jacksonville, FL 32204

Cristina Pierson  
John R. Hargrove  
Kelley Uustal PC  
500 North Federal Highway  
Suite 200  
Fort Lauderdale, FL 33301

To BANA:

Matthew W. Close  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899

Danielle N. Oakley  
O'Melveny & Myers LLP  
610 Newport Center Drive, Suite 1700  
Newport Beach, CA 92660

5.6 Modifications. No modifications to this Agreement may be made without written agreement of all Parties and Court approval.

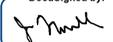
5.7 No Third-Party Beneficiaries. This Agreement shall not inure to the benefit of any third party.

5.8 Execution in Counterparts. This Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Agreement. Each signatory warrants that the signer has authority to bind his/her party.

5.9 CAFA. The Administrator shall timely send the notices required by 28 U.S.C. § 1715 within ten (10) calendar days after Plaintiffs files the motion seeking Preliminary Approval of the Settlement.

5.10 Deadlines. If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day.

FOR PLAINTIFFS AND THE SETTLEMENT CLASS:

<p><small>DocuSigned by:</small>    <small>8A8A5EE545C54DC...</small></p> <hr/> <p>Joanne Farrell</p>	<p>10/30/2017</p> <hr/> <p>Date</p>
<p><small>DocuSigned by:</small>    <small>8A8A5EE545C54DC...</small></p> <hr/> <p>Ronald Dinkins</p>	<p>10/30/2017</p> <hr/> <p>Date</p>
<p><small>DocuSigned by:</small>    <small>8A8A5EE546G54DC...</small></p> <hr/> <p>Larice Addamo</p>	<p>10/30/2017</p> <hr/> <p>Date</p>
<p><small>DocuSigned by:</small>    <small>8A8A5EE545C54DC...</small></p> <hr/>	<p>10/30/2017</p> <hr/>

Tia Little

Date



10/31/17

Jeffrey D. Kalief  
Tycko & Zavareei LLP  
1828 L Street, NW  
Suite 1000  
Washington, DC 20036  
(202) 973-0900

Jeff Ostrow  
Kopelowitz Ostrow P.A.  
1 West Las Olas Blvd.  
Suite 500  
Fort Lauderdale, FL 33301

Brian Gowdy  
Creed & Gowdy, P.A.  
865 May Street  
Jacksonville, FL 32204  
(904) 350-0075

Date

John R. Hargrove  
Kelley Uustal PC  
500 North Federal Highway  
Suite 200  
Fort Lauderdale, FL 33301  
(954) 522-6601

FOR BANK OF AMERICA, N.A.:

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

Tia Little

Date

\_\_\_\_\_  
Jeffrey D. Kaniel  
Tycko & Zavareei LLP  
1828 L Street, NW  
Suite 1000  
Washington, DC 20036  
(202) 973-0900

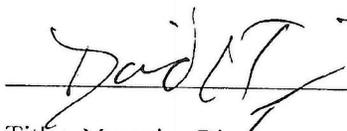
Jeff Ostrow  
Kopelowitz Ostrow P.A.  
1 West Las Olas Blvd.  
Suite 500  
Fort Lauderdale, FL 33301

Brian Gowdy  
Creed & Gowdy, P.A.  
865 May Street  
Jacksonville, FL 32204  
(904) 350-0075

Date

John R. Hargrove  
Kelley Uustal PC  
500 North Federal Highway  
Suite 200  
Fort Lauderdale, FL 33301  
(954) 522-6601

FOR BANK OF AMERICA, N.A.:

  
\_\_\_\_\_

Title: Managing Director  
Sr Product Management Executive  
Retail & Preferred Products

\_\_\_\_\_ Date 10/30/2017

# **EXHIBIT A**

1 JEFFREY D. KALIEL (CA 238293)  
2 **TYCKO & ZAVAREEI LLP**  
3 1828 L Street, N.W., Suite 1000  
4 Washington, DC 20036  
5 Telephone: (202) 973-0900  
6 Facsimile: (202) 973-0950  
7 *jkaliel@tzlegal.com*

8 ***Counsel for Plaintiffs***

9 MATTHEW W. CLOSE (S.B. #188570)  
10 DANIELLE N. OAKLEY (S.B. #246295)  
11 **O'MELVENY & MYERS LLP**  
12 400 South Hope Street  
13 Los Angeles, California 90071-2899  
14 Telephone: (213) 430-6000  
15 Facsimile: (213) 430-6407  
16 *mclose@omm.com*

17 ***Counsel for Defendant***  
18 ***Bank of America, N.A.***

19 UNITED STATES DISTRICT COURT  
20 SOUTHERN DISTRICT OF CALIFORNIA

21 JOANNE FARRELL, on behalf of  
22 herself and all others similarly situated,

23 Plaintiff,

24 v.

25 BANK OF AMERICA, N.A.,

26 Defendant.

27 CASE NO. 3:16-cv-00492-L-WVG

28 **[PROPOSED] ORDER GRANTING  
PLAINTIFF'S UNOPPOSED  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS  
SETTLEMENT AND FOR  
CERTIFICATION OF  
SETTLEMENT CLASS**

1 This case comes before the Court on the motion of Plaintiff, Joanne Farrell, and  
2 putative plaintiffs, Ronald Dinkins, Larice Addamo, and Tia Little (“Plaintiffs”), on behalf  
3 of themselves and the the Settlement Class they seek to represent, for an order granting  
4 Preliminary Approval of the class action Settlement between Plaintiffs and Defendant Bank  
5 of America, N.A. (“BANA”). The definitions and capitalized terms in the Settlement  
6 Agreement (“Agreement”) and Memorandum in Support of Plaintiff’s Unopposed Motion  
7 for Preliminary Approval of Class Settlement and for Certification of Settlement Class are  
8 hereby incorporated as though fully set forth in this Order, and shall have the same  
9 meanings attributed to them in those documents.

10 Having considered the matter, Plaintiffs’ motion, the proposed Agreement and the  
11 Joint Declaration of Class Counsel for the proposed Settlement Class and good cause  
12 appearing therefore,

13 IT IS HEREBY ORDERED THAT:

14 1. The Parties have agreed to settle this Action upon the terms and conditions  
15 set forth in the Agreement, which has been filed with the Court. The Agreement, including  
16 all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. Plaintiffs  
17 and the Settlement Class, by and through their counsel, have investigated the facts and law  
18 relating to the matters alleged in the Complaint, including through dispositive motion  
19 practice, legal research as to the sufficiency of the claims, an evaluation of the risks  
20 associated with continued litigation, trial, and/or appeal, including risks associated with the  
21 currently pending interlocutory appeal, and confirmatory discovery. The Settlement was  
22 reached as a result of arm’s length negotiations between Class Counsel and counsel for  
23 BANA, which occurred as a result of a mediation before the Honorable Layn R. Phillips  
24 (Ret.). The Settlement confers substantial benefits upon the Settlement Class, without the  
25 costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or  
26 appeal and is fair, adequate, and reasonable.

1           2.     The Court conditionally certifies, for settlement purposes only, the  
2 following Settlement Class:

3                     All holders of BANA consumer checking accounts who, during  
4 the Class Period, were assessed at least one Extended  
5 Overdrawn Balance Charge that was not refunded.

6           3.     The Settlement Class does not include the Judge, the Judge’s family, the  
7 Defendant or Defendant’s employees.

8           4.     The Court conditionally finds, for settlement purposes only and  
9 conditioned upon the entry of this Order and the Final Approval Order, that the  
10 prerequisites for a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of  
11 Civil Procedure have been satisfied in that: (a) the number of Settlement Class members is  
12 so numerous that joinder of all members thereof is impracticable; (b) there are questions of  
13 law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of  
14 the claims of the Settlement Class they seek to represent for purposes of settlement; (d)  
15 Plaintiffs have fairly and adequately represented the interests of the Settlement Class and  
16 will continue to do so, and Plaintiffs have retained experienced counsel to represent them;  
17 (e) for purposes of settlement, the questions of law and fact common to the Settlement  
18 Class members predominate over any questions affecting any individual Settlement Class  
19 member; and (f) for purposes of settlement, a class action is superior to the other available  
20 methods for the fair and efficient adjudication of the controversy. The Court also concludes  
21 that, because this Action is being settled rather than litigated, the Court need not consider  
22 manageability issues that might be presented by the trial of a nationwide class action  
23 involving the issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620  
24 (1997). Additionally, for the purposes of settlement only, the Court finds that BANA has  
25 acted on grounds that apply generally to the Settlement Class, so that the final injunctive  
26 relief to which the Parties have agreed is appropriate respecting the Settlement Class as a  
27 whole. In making these findings, the Court has exercised its discretion in conditionally

1 certifying the Settlement Class on a nationwide basis. *See Hanlon v. Chrysler Corp.*, 150  
2 F.3d 1011 (9th Cir. 1998).

3 5. The Court approves, as to form and content, the Class Notices attached to  
4 the Agreement as Exhibits B, C, and D. The Class Notices contain all of the essential  
5 elements necessary to satisfy the requirements of federal law, including the Federal Rules  
6 of Civil Procedure and federal and state due process provisions, including the class  
7 definition, the identities of the Parties and their counsel, a summary of the terms of the  
8 proposed settlement, information regarding the manner in which objections may be  
9 submitted, information regarding opt-out procedures and deadlines, and the date and  
10 location of the Final Approval Hearing.

11 6. The Court approves the Notice Program, as described in the Agreement.  
12 As soon as possible after the entry of this order, but not later than 60 days after the entry  
13 of this Order, the Administrator will complete notice to the Settlement Class as provided  
14 in the Agreement. The Court finds that the Settlement Class Notice Program is reasonable,  
15 that it constitutes due, adequate, and sufficient notice to all persons entitled to receive  
16 notice, and that it meets the requirements of due process and Rule 23 of the Federal Rules  
17 of Civil Procedure. Specifically, the Court finds that the Notice Program complies with  
18 Rule 23(e) of the Federal Rules of Civil Procedure as it is a reasonable manner of providing  
19 notice to those Settlement Class members who would be bound by the Agreement. The  
20 Court also finds that the manner of dissemination of notice complies with Rule 23(c)(2),  
21 as it is also the most practicable notice under the circumstances, provides individual notice  
22 to all Settlement Class members who can be identified through a reasonable effort, and is  
23 reasonably calculated, under all the circumstances, to apprise Settlement Class members  
24 of the pendency of this Action, the terms of the Settlement, and their right to object to the  
25 Settlement or exclude themselves from the Settlement Class.

26 7. The Class Notices will identify the opt-out and objection deadline of 120 days  
27 after the entry of this Order.

8. The Court hereby sets the following schedule of events:

Event	Calendar Days After Preliminary Approval Order
Notice Complete	60 Days
Opt-Out Deadline	120 Days
Objection Deadline	120 Days
Motion for Final Approval	150 Days

9. Any person falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement by submitting to the Administrator at the physical address listed in the Class Notices, a written, signed, and dated statement that he or she is opting-out of the Settlement Class and understands that he or she will receive no money from the Settlement of this Action. To be effective, this opt-out statement (i) must be received by the Administrator by the opt-out deadline, (ii) include the Settlement Class member’s name and last four digits of his or her social security number, and (iii) must be personally signed and dated by the Settlement Class member. All persons who timely submit properly completed requests for exclusion shall have no rights under the Agreement and shall not share in the benefits of the Settlement Agreement and shall not be bound by the Settlement Agreement.

10. Any person falling within the definition of the Settlement Class, and who does not opt-out from the Settlement, may object to the terms of the proposed Settlement as reflected in the Agreement, the certification of the Settlement Class, the entry of the Final Approval Order, the amount of attorneys’ fees and expenses requested by Class Counsel, and/or the amount of the Service Awards requested by the named Plaintiffs. To be valid and considered by the Court, an objection must (i) be postmarked on or before the Objection Deadline; (ii) state each objection the Class Member is raising and the specific legal and factual bases for each objection; (iii) include proof that the individual is a member of the Settlement Class; (iv) identify, with specificity, each instance in which the Class

1 Member or his or her counsel has objected to a class action settlement in the past five years,  
2 including the caption of each case in which the objector has made such objection, and a  
3 copy of any orders or opinions related to or ruling upon the objector's prior such objections  
4 that were issued by the trial and appellate courts in each listed case; (v) the identity of all  
5 counsel who represent the objector, including any former or current counsel who may be  
6 entitled to compensation for any reason related to the objection to the Settlement or fee  
7 application; (vi) any and all agreements that relate to the objection or the process of  
8 objecting – whether written or verbal – between objector or objector's counsel and any  
9 other person or entity; and (vii) be personally signed by the Settlement Class Member. All  
10 evidence and legal support a Settlement Class Member wishes to use to support an  
11 objection must be filed with the Court and sent to the Parties by the Objection Deadline.

12 11. Plaintiffs and BANA may file responses to any objections that are  
13 submitted. Any Settlement Class Member who timely files and serves an objection in  
14 accordance with this order may appear at the Final Approval Hearing, either in person or  
15 through an attorney, if the Settlement Class Member files a notice indicating that he/she  
16 wishes to appear at the Final Approval Hearing with the Clerk of Court no later than twenty  
17 20 calendar days before the Final Approval Hearing. A Class Member who wishes to  
18 appear at the Final Approval Hearing must also send a copy of the notice indicating that  
19 he/she wishes to appear to BANA's counsel and to Class Counsel 20 calendar days before  
20 the Final Approval Hearing. Failure to adhere to the requirements of this paragraph will  
21 bar a Settlement Class Member from being heard at the Final Approval Hearing, either  
22 individually or through an attorney, unless the Court otherwise orders.

23 12. The Court designates Joanne Farrell, Ronald Dinkins, Larice Addamo, and  
24 Tia Little as the Class Representatives of the Settlement Class.

25 13. The Court designates Epiq Systems as Administrator.



## **EXHIBIT B**

FROM: [EMAIL ADDRESS]  
TO: [EMAIL ADDRESS]  
RE: LEGAL NOTICE OF CLASS ACTION SETTLEMENT

**IF YOU INCURRED ONE OR MORE \$35 EXTENDED OVERDRAWN BALANCE CHARGES IN CONNECTION WITH YOUR BANK OF AMERICA PERSONAL CHECKING ACCOUNT, YOU MAY BE ENTITLED TO BENEFITS FROM A PROPOSED CLASS ACTION SETTLEMENT.**

**This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from an attorney, and you are not being sued.**

**PLEASE READ THIS NOTICE CAREFULLY, AS IT EXPLAINS YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM.**

*For more information, including a more detailed description of your rights and options, please click here or visit [www.EOBCsettlement.com](http://www.EOBCsettlement.com).*

A settlement has been reached in a class action lawsuit alleging that extended overdrawn balance charges (“EOBCs”) assessed by Bank of America, N.A. (“BANA”) violated the National Bank Act’s usury limit. BANA denies the allegations in the case and denies liability. The Court has not decided which side is right.

**WHO IS INCLUDED?**

BANA’s records show you are a member of the Settlement Class. The Settlement Class includes all holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

**WHAT ARE THE SETTLEMENT TERMS?**

BANA has agreed to cease the assessment of EOBCs for 5 years, subject to certain limitations set forth in the settlement agreement, and to pay a Settlement Amount of \$66.6 million, which includes: \$37.5 million in cash and debt reduction payments of \$29.1 million. Once the Court approves the Settlement, you will automatically receive a cash payment, account credit and/or debt reduction based upon EOBCs paid by or assessed to you.

**WHAT ARE MY OPTIONS?**

If you do not want to be bound by the Settlement, you must exclude yourself by **Month 00, 2018**. If you do not exclude yourself, you will release your claims against BANA. You may object to the Settlement by **Month 00, 2018**. The long form notice available at the Settlement website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on **Month 00, 2018**, to consider whether to approve the Settlement and a request for attorneys’ fees of up to 25% of the Settlement Value and service awards of up to \$5,000 for each Class Representative. Details regarding the hearing are in the long form Notice, available at the website below. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

*For more information, visit [www.EOBCsettlement.com](http://www.EOBCsettlement.com) or call 1-            -           .*

## **EXHIBIT C**

## **If You Incurred One or More \$35 Extended Overdrawn Balance Charges in Connection with Your Bank of America Personal Checking Account, You May Be Entitled to Benefits from a Proposed Class Action Settlement**

A settlement has been reached in a class action lawsuit alleging that extended overdrawn balance charges (“EOBCs”) assessed by Bank of America, N.A. (“BANA”) violated the National Bank Act’s usury limit. BANA denies the allegations in the case and denies liability. The Court has not decided which side is right.

**Who’s Included?** BANA’s records show you are a member of the Settlement Class. The Settlement Class includes all holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

**What Are the Settlement Terms?** BANA has agreed to cease the assessment of EOBCs for 5 years, subject to certain limitations set forth in the settlement agreement, and to pay a Settlement Amount of \$66.6 million, which includes: \$37.5 million in cash and debt reduction payments of \$29.1 million. Once the Court approves the Settlement, you will automatically receive a cash payment, account credit and/or debt reduction based upon EOBCs paid by or assessed to you.

**Your Other Options.** If you do not want to be bound by the Settlement, you must exclude yourself by **Month 00, 2018**. If you do not exclude yourself, you will release your claims against BANA. You may object to the Settlement by **Month 00, 2018**. The long form notice available at the Settlement website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on **Month 00, 2018**, to consider whether to approve the Settlement and a request for attorneys’ fees of up to 25% of the Settlement Value and service awards of up to \$5,000 for each Class Representative. Details regarding the hearing are in the long form notice, available at the website below. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

**[www.EOBCsettlement.com](http://www.EOBCsettlement.com)**

**1-8XX-XXX-XXXX**

Settlement Administrator  
P.O. Box XXXX  
Portland, OR 97XXX-XXXX

FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
Portland, OR  
PERMIT NO. 2882

## **Legal Notice about a Class Action Settlement**

## **EXHIBIT D**

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**If you Incurred One or More \$35 Extended Overdrawn Balance Charges in Connection with your BANK OF AMERICA personal checking account, you may be entitled to benefits from a proposed class action settlement**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

A settlement has been reached in a class action lawsuit pending in the United States District Court for the Southern District of California (the “Court”) entitled *Farrell v. Bank of America, N.A.*, Case No. 3:16-CV-00492-L-WVG (the “Action”). The Action challenges extended overdrawn balance charges (“EOBCs”) as allegedly violating the National Bank Act’s usury limit. Bank of America, N.A. (“BANA”) denies liability. The Court has not decided which side is right. The Court has tentatively approved the proposed settlement agreement to which the parties have agreed (“Settlement”).

- Current and former holders of BANA personal checking accounts who incurred EOBCs may be eligible for a cash payment, account credit, or a reduction of outstanding debt owed to BANA. You are receiving this notice because the parties to the Action believe you are a Settlement Class member, as that term is defined below, who is entitled to relief. Read this notice carefully. This notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a Settlement Class member.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Do Nothing - Receive A Cash Payment, Account Credit and/or Debt Reduction</b>	If you are entitled under the Settlement to a cash payment, account credit or debt reduction, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will automatically receive a cash payment, account credit and/or a debt reduction, as determined under the terms of the Settlement, and will give up your right to bring your own lawsuit against BANA about the claims in this case.
<b>Exclude Yourself From The Settlement</b>	Receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against BANA about the claims in this case.
<b>Object</b>	Write to the Court if you do not like the Settlement.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the Settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments, account credits, and debt reductions will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**Questions? Call 1- [REDACTED] or visit [www.EOBCsettlement.com](http://www.EOBCsettlement.com)**

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION ..... PAGE 3**

1. Why is there a Notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

**WHO IS IN THE SETTLEMENT..... PAGE 3**

5. Who is included in the Settlement?

**THE SETTLEMENT'S BENEFITS..... PAGE 4**

6. What does the Settlement provide?
7. How do I receive a cash payment, account credit, or debt reduction?
8. What am I giving up to stay in the Settlement Class?

**EXCLUDING YOURSELF FROM THE SETTLEMENT ..... PAGE 5**

9. How do I get out of the Settlement?
10. If I don't exclude myself, can I sue BANA for the same thing later?
11. If I exclude myself from the Settlement, can I still receive a payment, account credit, or debt reduction?

**THE LAWYERS REPRESENTING YOU..... PAGE 5**

12. Do I have a lawyer in this case?
13. How will the lawyers be paid?

**OBJECTING TO THE SETTLEMENT ..... PAGE 6**

14. How do I tell the Court that I don't like the Settlement?
15. What's the difference between objecting and excluding?

**THE COURT'S FINAL APPROVAL HEARING..... PAGE 7**

16. When and where will the Court decide whether to approve the Settlement?
17. Do I have to come to the hearing?
18. May I speak at the hearing?

**IF YOU DO NOTHING ..... PAGE 8**

19. What happens if I do nothing at all?

**GETTING MORE INFORMATION ..... PAGE 8**

20. How do I get more information?

## BASIC INFORMATION

### 1. Why is there a Notice?

A court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge M. James Lorenz, of the U.S. District Court for the Southern District of California, is overseeing this case. The case is known as *Joanne Farrell v. Bank of America, N.A.*, Case No. 3:16-cv-00492-L-WVG. The person who sued is called the “Plaintiff.” The Defendant is BANA.

### 2. What is this lawsuit about?

The lawsuit claims that EOBCs assessed in connection with consumer checking accounts violate the National Bank Act’s usury limit.

The complaint in this Action is posted on the settlement website, [www.EOBCSettlement.com](http://www.EOBCSettlement.com). BANA denies liability. The Court has not decided which side is right.

### 3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this case, four BANA customers who were assessed EOBCs), sue on behalf of people who have similar claims.

All of the people who have claims similar to the Class Representatives are members of the Settlement Class, except for those who exclude themselves from the Settlement Class.

### 4. Why is there a Settlement?

The Court has not decided in favor of either the Plaintiffs or BANA. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class members receive the benefits described in this notice. The Class Representatives and their attorneys think the Settlement is best for everyone who is affected.

## WHO IS IN THE SETTLEMENT?

If you received notice of the Settlement from a postcard or email addressed to you, then the parties believe you are in the Settlement Class. But even if you did not receive a postcard or email with notice of the Settlement, you may still be in the Settlement Class, as described below. If you did not receive a postcard or email addressed to you but you believe you are in the Settlement Class, as defined below, you may contact the Settlement Administrator.

### 5. Who is included in the Settlement?

The settlement class (“Settlement Class”) includes:

All holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

If this did not happen to you, you are not a member of the Settlement Class. You may contact the Settlement Administrator if you have any questions as to whether you are in the Settlement Class.

Questions? Call 1                      or visit [www.EOBCSettlement.com](http://www.EOBCSettlement.com)

## THE SETTLEMENT'S BENEFITS

### 6. What does the Settlement provide?

The Settlement provides that BANA will provide sixty-six million six hundred thousand dollars (\$66,600,000) to settle the class action (the "Settlement Amount"). Of the Settlement Amount, BANA will pay thirty-seven million five hundred thousand dollars (\$37,500,000) in cash, and BANA will provide twenty-nine million one hundred thousand dollars (\$29,100,000) in the form of debt reduction payments. After paying certain other costs and court-approved amounts, the cash relief will be distributed among Settlement Class members who paid one or more EOBCs that they incurred in connection with their BANA personal checking accounts between February 25, 2014 and December 30, 2017. Settlement Class members who currently hold BANA checking accounts will have their cash awards deposited directly into their accounts. Settlement Class members who no longer hold BANA checking accounts will receive their cash awards via check. Each Settlement Class member's cash award will depend upon the number of EOBCs the Settlement Class member paid and on the total number of Settlement Class members. The debt relief will be provided to Settlement Class members whose personal checking accounts BANA closed in overdrawn status with an EOBC still pending and whose overdrawn balances remain due and owing to BANA. Debt relief will be provided in the form of debt reduction payments, in an amount up to \$35, but in no event exceeding the amount of a Settlement Class member's overdrawn balance remaining due and owing to BANA. Debt relief will not result in any cash payments to Settlement Class members.

### 7. How do I receive a cash payment, account credit, or debt reduction payment?

If you are in the Settlement Class and entitled to receive a cash payment, account credit, or debt reduction payment, you do not need to do anything to receive the relief to which you are entitled under the Settlement. If the Court approves the Settlement and it becomes final and effective, you will automatically receive a payment, account credit and/or debt reduction.

### 8. What am I giving up to stay in the Settlement Class?

If the Settlement is finally approved, each Settlement Class member who has not excluded himself or herself from the Settlement Class pursuant to the procedures set forth in the settlement agreement releases, waives, and forever discharges BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its subsidiaries and affiliates (collectively, "BANA Releasees") from any and all claims they have or may have against the BANA Releasees with respect to the assessment of EOBCs as well as (i) any claim or issue which was or could have been brought relating to EOBCs against any of the BANA Releasees in the Action and (ii) any claim that any other overdraft charge imposed by BANA during the Class Period, including but not limited to EOBCs and initial overdraft fees, constitutes usurious interest, in all cases including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses ("Released BANA Claims"). Each Settlement Class member

Questions? Call 1  or visit [www.EOBCSettlement.com](http://www.EOBCSettlement.com)

who does not exclude himself or herself from the Settlement Class will also be bound by all of the decisions by the Court. Section [redacted] of the Settlement describes the precise legal claims that you give up if you remain in the Settlement. The Settlement is available at [www.EOBCsettlement.com](http://www.EOBCsettlement.com).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue BANA on your own about the Released BANA Claims, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as “opting-out” of the Settlement Class.

### 9. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a dated letter that includes the following:

- Your name, address, telephone number, last four digits of your social security number, and your BANA checking account number(s);
- A statement that you want to be excluded from the BANA EOBC Settlement in *Joanne Farrell v. Bank of America, N.A.*, Case No. 3:16-cv-00492-L-WVG and that you understand you will receive not receive any money or debt reduction from the Settlement; and
- Your signature.

You must mail your exclusion request, postmarked no later than [redacted], 2018, to:

EOBC Litigation Exclusions  
P.O. Box [redacted]  
Portland, OR 97208-4178

### 10. If I don't exclude myself, can I sue BANA for the same thing later?

No. Unless you exclude yourself, you give up the right to sue BANA for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

### 11. If I exclude myself from the Settlement, can I still receive a payment, account credit, or debt reduction?

No. You will not receive a cash payment, account credit and/or debt reduction if you exclude yourself from the Settlement.

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in this case?

The Court has appointed lawyers to represent you and others in the Settlement Class as “Class Counsel,” including:

<p>Jeffrey Kalief  <b>Tycko &amp; Zavareei LLP</b>          1828 L St. NW Suite 1000          Washington, DC 20036</p>	<p>Jeff Ostrow  <b>Kopelowitz Ostrow P.A.</b>          1 West Las Olas Blvd. Ste. 500          Fort Lauderdale, FL 33301</p>
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Questions? Call 1 [redacted] or visit [www.EOBCSettlement.com](http://www.EOBCSettlement.com)

Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 13. How will the lawyers be paid?

Class Counsel may request up to twenty-five percent (25%) of the Settlement Value for attorneys' fees, plus reimbursement of their expenses incurred in connection with prosecuting this case. The fees and expenses awarded by the Court will be paid out of the Cash Settlement Amount, as that term is defined in the settlement agreement. The Court will determine the amount of fees and expenses to award. Class Counsel may also request awards of up to \$5,000.00 for each Class Representative to be paid from the Cash Settlement Amount for their service to the entire Settlement Class.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

### 14. How do I tell the Court that I don't like the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for attorneys' fees and expenses and/or Class Counsel's request for awards for the Class Representatives. To object, you must submit a letter that includes the following:

- The name of this case, which is *Joanne Farrell v. Bank of America, N.A.*, Case No. 3:16-cv-00492-L-WVG;
- Your full name, address and telephone number;
- An explanation of the basis upon which you claim to be a Settlement Class member;
- Each objection you are raising, along with the specific legal and factual grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case;
- Any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between you or your counsel and any other person or entity;
- The identity of all counsel representing you who will appear at the hearing that the Court has scheduled to determine whether to grant Final Approval to the Settlement and Class Counsel's request for attorneys' fees and service awards to the Class Representatives (the "Final Approval Hearing");
- The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection and a copy

Questions? Call 1                      or visit [www.EOBCSettlement.com](http://www.EOBCSettlement.com)

of any orders related to or ruling upon counsel’s or the firm’s prior objections that were issued by the trial and appellate courts in each listed case;

- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney’s signature is not sufficient).

You must submit your objection to the following addresses, so that it is received by all the people listed below no later than [REDACTED], 2018:

Clerk of the Court U.S. District Court for the S. Dist. of California Judge M. James Lorenz Courtroom 5B, Suite 5145 221 West Broadway San Diego, CA 92101	EOBC Litigation P.O. Box [REDACTED] Portland, OR 97208-4178
Jeffrey Kaliel <b>Tycko &amp; Zavareei LLP</b> 1828 L St. NW Suite 1000 Washington, DC 20036	Matthew C. Close <b>O’Melveny &amp; Myers LLP</b> 400 S. Hope Street Los Angeles, CA 90071
Jeff Ostrow <b>Kopelowitz Ostrow P.A.</b> 1 W. Las Olas Blvd., Ste. 500 Ft. Lauderdale, FL 33301	Danielle N. Oakley <b>O’Melveny &amp; Myers LLP</b> 610 Newport Center Dr. Ste 1700 Newport Beach, CA 92660

**15. What’s the difference between objecting and excluding?**

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don’t want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

**THE COURT’S FINAL APPROVAL HEARING**

The Court will hold the Final Approval Hearing to decide whether to approve the Settlement and the request for attorneys’ fees and Service Awards for Class Representatives. You may attend and you may ask to speak, but you don’t have to do so.

**16. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on [REDACTED], 2018 at [REDACTED], at the United States District Court for Southern District of California, located at Courtroom 5B, Suite 5145, 221 West Broadway, San Diego, California 92101. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.EOBCSettlement.com](http://www.EOBCSettlement.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for attorneys’ fees and expenses and for service awards for Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**Questions? Call 1 [REDACTED] or visit [www.EOBCSettlement.com](http://www.EOBCSettlement.com)**

**17. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address, and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

**18. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing, if you have filed and served a timely objection to the Settlement, according to the procedures set out in Section 14 above. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your notice of intention to appear must include the following:

- Your name, address and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for BANA EOBC Settlement in *Joanne Farrell v. Bank of America, N.A.*, Case No. 3:16-cv-00492-L-WVG;
- The reasons you want to be heard;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your signature.

You must submit your Notice of Intention to Appear, so that it is received no later than [REDACTED], 2018, to all of the addressees listed under Question 14.

**IF YOU DO NOTHING**

**19. What happens if I do nothing at all?**

If you do nothing, you will still receive the benefits to which you are entitled. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against BANA relating to the legal issues in this case or the conduct alleged in the complaint.

**GETTING MORE INFORMATION**

**20. How do I get more information?**

This Long Form Notice summarizes the proposed Settlement. More details can be found in the Settlement. You can obtain a copy of the Settlement at [www.EOBCSettlement.com](http://www.EOBCSettlement.com). You may also write with questions to EOBC Litigation, P.O. Box [REDACTED], Portland, OR 97208-4178, or call the toll-free number, 1-[REDACTED]. Do not contact BANA or the Court for information.

Questions? Call 1-[REDACTED] or visit [www.EOBCSettlement.com](http://www.EOBCSettlement.com)

# **EXHIBIT E**

1 JEFFREY D. KALIEL (CA 238293)  
2 **TYCKO & ZAVAREEI LLP**  
3 1828 L Street, N.W., Suite 1000  
4 Washington, DC 20036  
5 Telephone: (202) 973-0900  
6 Facsimile: (202) 973-0950  
7 *jkaliel@tzlegal.com*

8 ***Counsel for Plaintiffs***

9 MATTHEW W. CLOSE (S.B. #188570)  
10 DANIELLE N. OAKLEY (S.B. #246295)  
11 **O'MELVENY & MYERS LLP**  
12 400 South Hope Street  
13 Los Angeles, California 90071-2899  
14 Telephone: (213) 430-6000  
15 Facsimile: (213) 430-6407  
16 *mclose@omm.com*

17 ***Counsel for Defendant***  
18 ***Bank of America, N.A.***

19 UNITED STATES DISTRICT COURT  
20 SOUTHERN DISTRICT OF CALIFORNIA

21 JOANNE FARRELL, on behalf of  
22 herself and all others similarly situated,

23 Plaintiff,

24 v.

25 BANK OF AMERICA, N.A.,

26 Defendant.

27 CASE NO. 3:16-cv-00492-L-WVG

28 **[PROPOSED] ORDER AND  
JUDGMENT GRANTING FINAL  
APPROVAL OF CLASS  
SETTLEMENT**

1 This case comes before the Court on the motion of Class Representatives Joanne  
2 Farrell, Ronald Dinkins, Larice Addamo, and Tia Little (“Plaintiffs”), on behalf of  
3 themselves and the Settlement Class they represent, for an order granting Final Approval  
4 of the class action Settlement Agreement (“Motion”) between Plaintiffs and Defendant,  
5 Bank of America, N.A. (“BANA”). The definitions and capitalized terms in the Settlement  
6 Agreement (“Agreement”) and Memorandum in Support of Plaintiff’s Unopposed Motion  
7 for Preliminary Approval of Class Action Settlement and for Certification of Settlement  
8 Class are hereby incorporated as though fully set forth in this Final Approval Order and  
9 Judgment (“Final Approval Order”), and shall have the meanings attributed to them in  
10 those documents.

11 The Court preliminarily approved the Agreement by Preliminary Approval Order  
12 dated [DATE [Dkt. No. \_\_\_\_]], conditionally certified for settlement purposes the  
13 Settlement Class, and approved the form, content, and method of providing notice proposed  
14 by the Parties. The Settlement Class Notices were thereafter distributed to members of the  
15 Settlement Class pursuant to the terms of the Preliminary Approval Order. (See Joint  
16 Declaration of Class Counsel [Name] in Support of Motion for Final Approval of  
17 Settlement.)

18 The Court has read and considered the papers filed in support of the Motion,  
19 including the Agreement and the exhibits thereto, memoranda and arguments submitted on  
20 behalf of Plaintiffs, the Settlement Class, and BANA, together with supporting  
21 declarations. The Court has also considered any objections or other written comments  
22 submitted to the Clerk of the Court by members of the Settlement Class, together with the  
23 responses of the Parties to the objections.

24 The Court held a Final Approval Hearing on [DATE], at which time the Parties and  
25 all other interested persons were heard in support of and in opposition to the Settlement.

26 Based on the papers filed with the Court and the presentations made to the Court by  
27 the Parties and other interested persons at the Final Approval Hearing, it appears to the  
28 Court that the Agreement is fair, reasonable, and adequate. Accordingly,

1 IT IS HEREBY ORDERED THAT:

2 1. For purposes of this Settlement only, the Court has jurisdiction over the  
3 subject matter of the Complaint and personal jurisdiction over the Parties and the  
4 Settlement Class.

5 2. To effectuate Final Approval of the Settlement, the Court grants the  
6 Unopposed Motion to Amend Complaint, to Add Class Representatives, and to Modify  
7 Case Style [Dkt. No. 60], adding Ronald Anthony Dinkins, Larice Addamo, and Tia Little  
8 as Plaintiffs. The Amended Complaint attached to the Motion to Amend as *Exhibit A* is  
9 deemed filed. All material allegations therein are deemed denied by BANA. Pursuant to  
10 Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), and based on findings made  
11 in the Preliminary Approval Order, the Court certifies, solely for purposes of effectuating  
12 this Settlement, the Settlement Class, defined in paragraph 1.32 of the Agreement.

13 3. The Court has determined that the Class Notices given to Settlement Class  
14 members fully and accurately informed Settlement Class members of all material elements  
15 of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement  
16 Class members consistent with all applicable requirements. The Court further finds that  
17 the Notice Program satisfies due process and has been fully implemented.

18 4. The Settlement Class members listed on Exhibit 1 to this Final Approval  
19 Order have properly and timely opted-out of the Settlement and are therefore not bound by  
20 the Settlement, Releases, Final Approval Order or Final Judgment.

21 5. The Court finally approves the Settlement of this Action in accordance  
22 with the terms of the Agreement and, having considered the matters required under  
23 applicable law, finds that the Settlement is in all respects fair, reasonable, adequate and in  
24 the best interest of the Settlement Class members, especially in light of the fact that  
25 Plaintiffs and the Settlement Class, by and through their counsel, have investigated the  
26 facts and law relating to the matters alleged in the Complaint and Amended Complaint,  
27 including through dispositive motion practice, legal research as to the sufficiency of the  
28 claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal,

1 including risks associated with the currently pending interlocutory appeal, and  
2 confirmatory discovery. The Settlement was reached as a result of arm's length  
3 negotiations between Class Counsel and counsel for BANA, which occurred as a result of  
4 mediation before the Honorable Layn R. Phillips (Ret.). The Settlement confers substantial  
5 benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks  
6 associated with continued litigation, trial, and/or appeal and is fair, adequate, and  
7 reasonable. In finding the Settlement fair, reasonable and adequate, the Court has also  
8 considered the number of exclusions from the Settlement, objections by Settlement Class  
9 Members, and the opinion of competent counsel concerning such matters. The Court has  
10 considered duly filed objections to the Settlement, if any, and to the extent such objections  
11 have not been withdrawn, superseded, or otherwise resolved, they are overruled and denied  
12 in all respects on their merits.

13           6. The Court orders the Parties to the Agreement to perform their obligations  
14 thereunder pursuant to the terms of the Agreement. BANA is ordered to pay the Cash  
15 Settlement Amount and Debt Reduction Amount consistent with the terms of the  
16 Agreement. Beginning on or before December 31, 2017, BANA shall not implement or  
17 assess EOBCs, or any equivalent fee, in connection with BANA consumer checking  
18 accounts, for a period of five years, or until December 31, 2022, except to the extent the  
19 Agreement expressly provides otherwise.

20           7. The Court dismisses the Complaint and Amended Complaint and all  
21 claims and causes of action asserted therein with prejudice. These dismissals are without  
22 costs to any party, except as specifically provided in the Agreement.

23           8. The Court adjudges that the Plaintiff and all Settlement Class Members  
24 shall be bound by this Final Approval Order.

25           9. Upon the Effective Date, Plaintiff and each Settlement Class member who  
26 has not opted-out of the Settlement Class pursuant to the procedures set forth in the  
27 Agreement, shall be deemed to have, and by operation of this Final Approval Order, shall  
28 have released all BANA Releasees in accordance with the Settlement Agreement.

1           10. Without affecting the finality of this Final Approval Order in any way, the  
2 Court retains jurisdiction over: (a) implementation and enforcement of the Agreement  
3 pursuant to further order of the Court until the final judgment contemplated hereby has  
4 become effective and each and every act agreed to be performed by the Parties shall have  
5 been performed pursuant to the Agreement; (b) any other action necessary to conclude this  
6 Settlement and to implement the Agreement; and (c) the construction and interpretation of  
7 the Agreement.

8           11. The Court has considered Class Counsel’s request for a Fee & Expense  
9 Award in the amount of \_\_\_\_\_ in attorneys’ fees and \_\_\_\_\_ in  
10 expenses and finds the requested Fee & Expense Award and expenses appropriate because:

- 11           a. The Settlement provides substantial benefits for Settlement Class Members,  
12 including but not limited to, a five-year cessation of the fee at issue in the  
13 litigation under specific terms and limitations set forth in the Agreement, the  
14 Cash Settlement Fund, Debt Reduction Payments, and the payment of  
15 Administration Costs.
- 16           b. The requested award of attorneys’ fees, a sub-set of the requested Fee & Expense  
17 Award, constitutes [X]% of the Settlement Value.
- 18           c. The quality of legal services provided by Class Counsel has been outstanding, in  
19 light of the Settlement itself, the complexity of the litigation, and the efficient  
20 litigation and settlement by attorneys with experience in litigating class actions  
21 relating to fees charged by national banks.
- 22           d. Class Counsel has taken considerable risks in pursuing this litigation.
- 23           e. By receiving payment from the Settlement Amount, Class Counsel’s interests  
24 were fully aligned, during the settlement negotiation process, with those  
25 members of the Settlement Class, such that Class Counsel had appropriate  
26 incentives to maximize the size of the Settlement Amount.

27  
28

1 f. The expenses incurred by Class Counsel are unreimbursed out-of-pocket  
2 expenses and costs that were incurred in prosecution of the claims and in  
3 obtaining a settlement, and are therefore reasonable litigation expenses.

4 g. The Fee & Expense Award shall be paid from the Settlement Fund as provided  
5 by the Settlement Agreement. Distribution of the Fee & Expense Award among  
6 Class Counsel will be at the sole discretion of Class Counsel.

7 12. The Court approves the Class Representative Service Awards for each of  
8 the Plaintiffs in the amount of \$5,000, based on a finding that such amounts represent an  
9 appropriate payment for their service to the Settlement Class.

10 13. This Final Approval Order is not a finding or determination of any  
11 wrongdoing by BANA.

12 14. The Court finds that no just reason exists for delay in entering this Final  
13 Approval Order and, accordingly, the Clerk is hereby directed forthwith to enter this Final  
14 Approval Order.

15  
16 IT IS SO ORDERED.

17 Date: \_\_\_\_\_  
18 \_\_\_\_\_  
19 United States District Judge  
20  
21  
22  
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27  
28

# **EXHIBIT F**

# Personal Schedule of Fees

*Effective July 14, 2017*

**Bank of America** 

[bankofamerica.com](http://bankofamerica.com)

Applies in all states.

Bank of America, N.A. Member FDIC. ©2017 Bank of America Corporation.  
91-11-3000B 07/2017  
00-14-9299

  
29912

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## Overview

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This schedule lists account fees and also explains how you can avoid some account fees. Please review the account description for details about your account. Other account fees that can apply to your account are listed in the account descriptions and in the Other Account Fees and Services section.

Your account and deposit relationship with us are governed by this schedule of fees and the *Deposit Agreement and Disclosures*. Please read both agreements carefully. These agreements are part of the binding contract between you and us for your account and deposit relationship. You can also find these agreements at [bankofamerica.com](http://bankofamerica.com).

When you open a deposit account, it is located at a financial center and generally remains at that location until it is closed. If your address is in a state where we do not have a financial center at the time, we may open the account at a financial center in Virginia. If state taxes apply to an account or service, taxes are in addition to the fee amount listed.

We may change the accounts and services described in this schedule at any time. We may add new terms and conditions. We may delete or amend existing terms and conditions. We may also add new accounts or services and convert or discontinue existing accounts or services at any time.

You can get information about interest rates and fees for services not covered in this schedule by visiting a financial center or calling us at the number on your statement.

## Optional Services

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The following optional services are generally available with our checking and savings accounts:

- Debit card (Photo Security® feature available) or ATM card
- Online Banking service
- Online and Mobile Bill Pay service
- Email and Text Alerts
- Direct deposits
- Keep the Change® Savings Service
- Affinity Banking
- Preferred Rewards
- Overdraft Protection Service from another linked account
- Automatic transfers from checking to savings

These optional services can help you manage your account. To learn more about them, please review the agreement for that service. You can also review information on [bankofamerica.com](http://bankofamerica.com) or speak to a financial center associate.

Investment products are provided by Merrill Lynch, Pierce, Fenner & Smith Incorporated and:

<b>Are Not FDIC Insured</b>	<b>Are Not Bank Guaranteed</b>	<b>May Lose Value</b>
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**Personal Checking Accounts**

<b>Account</b>	<b>Monthly Maintenance Fee for Checking Account and How to Avoid It</b>	<b>Other Important Account Information</b>
<p><b>Bank of America Core Checking®</b></p> <ul style="list-style-type: none"> <li>• Use direct deposit</li> <li>• Non-interest bearing account</li> <li>• Minimum to open - \$25.00</li> </ul>	<p>Monthly maintenance fee for Bank of America Core Checking - \$12.00</p> <p>To avoid the monthly maintenance fee, meet <b>one</b> of the following requirements during each statement cycle:</p> <ul style="list-style-type: none"> <li>• Have at least one qualifying direct deposit of \$250 or more made to your account each statement cycle. Or</li> <li>• Maintain a minimum daily balance of \$1,500 or more in your account. Or</li> <li>• Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts).</li> </ul>	<p><b>Student waiver.</b> When this account is owned either individually or jointly by a student, upon your request we waive the monthly maintenance fee for each statement cycle during which the student meets <b>both</b> of the following requirements:</p> <ul style="list-style-type: none"> <li>• The student is enrolled in a high school or a college, university or vocational program, <b>and</b></li> <li>• The student is under 24 years old.</li> </ul> <p>College, university and vocation students may be required to show proof of enrollment. This student waiver does not apply when the student turns 24, ceases to be an owner of the account, or is no longer enrolled in school.</p> <p>For information about direct deposits, see page 13.</p> <p>The minimum daily balance is the lowest balance that we determine is in the account during a statement cycle. This means you will need to ensure your account does not fall below \$1,500 during your statement cycle.</p>

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

**Personal Checking Accounts (cont.)**

Account	Monthly Maintenance Fee for Checking Account and How to Avoid It	Other Important Account Information
<p><b>Bank of America Interest Checking®</b></p> <ul style="list-style-type: none"> <li>• Interest bearing account</li> <li>• Variable rate</li> <li>• Minimum to open - \$100.00</li> </ul>	<p>Monthly maintenance fee for Bank of America Interest Checking - \$25.00</p> <p>To avoid the monthly maintenance fee, maintain a <b>combined balance of \$10,000</b> or more during each statement cycle.</p> <p>For each statement cycle, we add the following balances together to determine your combined balance:</p> <ul style="list-style-type: none"> <li>• The average daily balance in your Interest Checking account and in each checking, savings and money market savings account that is linked to your Interest Checking account. We determine the average daily balance in a linked account by using the beginning balance in the linked account for each day of the Interest Checking statement cycle.</li> <li>And</li> <li>• The current balance, as of the end of your Interest Checking statement cycle, in each CD and IRA that is linked to your Interest Checking account.</li> <li>And</li> <li>• The current balance, as of two business days before the end of your Interest Checking statement cycle, in each eligible Merrill Edge and Merrill Lynch investment account that is linked to your Interest Checking account.</li> <li>Or</li> <li>• Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts).</li> </ul>	<p>You can also get the following services with this account:</p> <ul style="list-style-type: none"> <li>• Three additional Bank of America Interest Checking accounts and four savings accounts with no monthly maintenance fee when you link them to your primary Interest Checking account.</li> <li>• Free standard checks or discounts on certain styles.</li> <li>• No transfer fee for Overdraft Protection transfers from your linked Bank of America savings, line of credit or secondary checking account. (Other line of credit fees may apply.)</li> <li>• No fee for incoming domestic wire transfers, cashier's checks, stop payments, and more.</li> </ul> <p><i>Additional accounts.</i> For accounts linked to your Interest Checking account, we waive the monthly maintenance fee on the first three linked Interest Checking accounts and on the first four linked savings accounts of any type (regular and money market savings accounts). The minimum amount you need to open each additional account, and other terms and fees, apply to each linked account. While you can also have us link more accounts, this waiver of the monthly maintenance fee does not apply to them. Transaction limits apply to savings accounts. See "What are the transaction limitations on my savings account?" in the <i>Frequently Asked Questions About Accounts</i> section on page 14.</p> <p><i>Linking accounts.</i> You must tell us what accounts you want us to link to your Interest Checking account. You can do so by visiting a financial center or calling us at the number on your statement. We do not automatically link other accounts for pricing. Certain restrictions apply. Please review "What does it mean to link accounts?" on page 13.</p> <p><i>Employees and Retirees:</i> Bank of America employee and retirees qualify for a waiver of the monthly maintenance fee on up to four Bank of America Interest Checking accounts. When employees or retirees no longer meet the qualifications, standard product terms and pricing apply. See "Which employees and retirees are eligible for a waiver of the Monthly Maintenance Fee?" in the <i>Frequently Asked Questions About Accounts</i> section on page 14.</p>

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

**Personal Savings Accounts**

Account	Monthly Maintenance Fee for Savings Account and How to Avoid It	Other Important Account Information
<p><b>Regular Savings</b></p> <ul style="list-style-type: none"> <li>• Basic account to build a savings program</li> <li>• Interest bearing account</li> <li>• Variable interest rate</li> <li>• Minimum amount to open - \$25.00</li> </ul>	<p>Monthly maintenance fee - \$5.00</p> <p>To avoid the monthly maintenance fee, meet <b>one</b> of the following requirements during each statement cycle:</p> <ul style="list-style-type: none"> <li>• Maintain a minimum daily balance of \$300 or more in your account. Or</li> <li>• Link your account to your Bank of America Interest Checking or Advantage account (first 4 savings accounts). Or</li> <li>• Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 savings accounts).</li> </ul> <p>To avoid the monthly maintenance fee you may also make combined monthly automatic transfers of \$25 or more from your Bank of America checking account to your savings account during the immediately preceding statement cycle.</p> <p><i>Effective with statement cycles that start on or after September 7, 2017, you will no longer be able to make automatic transfers in order to avoid the \$5 monthly maintenance fee for the subsequent statement cycle.</i></p>	<ul style="list-style-type: none"> <li>• Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee.</li> <li>• If you maintain a minimum daily balance of \$20,000 or more in your Regular Savings account or if you are enrolled in the Preferred Rewards program, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is \$10.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means.</li> <li>• Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the <i>Frequently Asked Questions About Accounts</i> section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.</li> </ul>

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

**Personal Savings Accounts (cont.)**

<b>Account</b>	<b>Monthly Maintenance Fee for Savings Account and How to Avoid It</b>	<b>Other Important Account Information</b>
<p><b>Minor Savings Accounts (Under 18)</b></p> <ul style="list-style-type: none"> <li>• Under 18 years old, beginning a savings program</li> <li>• Interest bearing account</li> <li>• Variable interest rate</li> <li>• Minimum amount to open - \$25.00</li> </ul> <p>(Use Regular Savings or Rewards Money Market Savings for custodial ownership, such as UTMA/UGMA)</p>	<p>No monthly maintenance fee</p>	<ul style="list-style-type: none"> <li>• After you turn 18, we automatically convert your Minor Savings to a Regular Savings account.</li> <li>• Parents can make automatic transfers from checking.</li> <li>• Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee.</li> <li>• If you maintain a minimum daily balance of \$300 or more in your Minor Savings account, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is \$1.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means.</li> <li>• Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the <i>Frequently Asked Questions About Accounts</i> section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.</li> </ul>
<p><b>Rewards Money Market Savings</b></p> <ul style="list-style-type: none"> <li>• Variable interest rate</li> <li>• Potential for Preferred Rewards interest rate booster feature</li> <li>• Minimum amount to open - \$25.00</li> </ul>	<p>Monthly maintenance fee - \$12.00</p> <p>To avoid the monthly maintenance fee, meet <b>one</b> of the following requirements during each statement cycle:</p> <ul style="list-style-type: none"> <li>• Maintain a minimum daily balance of \$2,500 or more in your account. Or</li> <li>• Link your account to your Bank of America Interest Checking or Advantage account (first 4 savings accounts). Or</li> <li>• Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 savings accounts).</li> </ul>	<ul style="list-style-type: none"> <li>• This account is eligible for the interest rate booster feature of the Preferred Rewards program, which may increase your interest rate based on your Preferred Rewards tier.</li> <li>• Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee.</li> <li>• If you maintain a minimum daily balance of \$20,000 or more in your Rewards Money Market Savings account or if you are enrolled in the Preferred Rewards program, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is \$10.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means.</li> <li>• Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the <i>Frequently Asked Questions About Accounts</i> section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.</li> </ul>

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

**Personal CD/IRA Accounts**

<b>Account</b>	<b>Minimum Amount You Need to Open Account</b>	<b>Account Features / Services</b>	<b>Other Important Account Information</b>
<b>Fixed Term CD Terms of 7 Days—27 Days</b>	\$15,000	<ul style="list-style-type: none"> <li>• Interest rate fixed until maturity.</li> <li>• No additional deposits until maturity.</li> <li>• Automatically renews.</li> </ul>	<ul style="list-style-type: none"> <li>• A penalty is imposed for early withdrawal.</li> </ul>
<b>Fixed Term CD Terms of 28 Days—10 Years</b>	\$1,000	<ul style="list-style-type: none"> <li>• Interest rate fixed until maturity.</li> <li>• No additional deposits until maturity.</li> <li>• Automatically renews.</li> </ul>	<ul style="list-style-type: none"> <li>• A penalty is imposed for early withdrawal.</li> <li>• For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.</li> </ul>
<b>Featured CD/IRA</b>	See deposit rate sheet for minimum opening amount	<ul style="list-style-type: none"> <li>• Interest rate fixed until maturity.</li> <li>• No additional deposits until maturity.</li> <li>• Automatically renews.</li> <li>• See deposit rate sheet for available terms.</li> </ul>	<ul style="list-style-type: none"> <li>• A penalty is imposed for early withdrawal.</li> <li>• For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.</li> </ul>
<b>Fixed Term IRA/CESA Terms of 6 Months—10 Years</b>	Fixed Term IRA: \$1,000; CESA: \$500	<ul style="list-style-type: none"> <li>• Interest rate fixed until maturity.</li> <li>• No additional deposits until maturity.</li> <li>• Automatically renews.</li> </ul>	<ul style="list-style-type: none"> <li>• A penalty is imposed for early withdrawal.</li> <li>• We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.</li> </ul>

Please also review *Other Account Fees and Services* on pages 8-12 and the *Deposit Agreement and Disclosures*. The *Deposit Agreement and Disclosures* contains information about the early withdrawal penalty and other terms for CDs. Also, see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional IRA and CESA account information.

**Personal CD/IRA Accounts (cont.)**

Account	Minimum Amount You Need to Open Account	Account Features / Services	Other Important Account Information
<b>Variable Rate IRA/CESA</b> <b>Terms of 18 Months—</b> <b>23 Months</b>	\$100	<ul style="list-style-type: none"> <li>• Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time.</li> <li>• Additional deposits allowed during term.</li> <li>• Automatically renews.</li> <li>• Make saving easier with automatic transfers.</li> </ul>	<ul style="list-style-type: none"> <li>• A penalty is imposed for early withdrawal.</li> <li>• We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.</li> </ul>
<b>Money Market IRA/</b> <b>CESA</b>	\$100	<ul style="list-style-type: none"> <li>• Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time.</li> <li>• Additional deposits allowed at any time.</li> <li>• Make saving easier with automatic transfers.</li> </ul>	<ul style="list-style-type: none"> <li>• This is a savings account.</li> <li>• Pre-authorized transfers and withdrawals are subject to certain limitations. See “What are the transaction limitations on my savings account?” on page 14. Withdrawals by check, draft or debit card are not allowed.</li> </ul>

Please also review *Other Account Fees and Services* on pages 8-12 and the *Deposit Agreement and Disclosures*. The *Deposit Agreement and Disclosures* contains information about the early withdrawal penalty and other terms for CDs. Also, see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional IRA and CESA account information.

**Other Account Fees and Services**

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
<b>ATM Card and Debit Card Fees</b>	Replacement ATM or Debit Card Fee	\$5.00 per card	<ul style="list-style-type: none"> <li>• Fee for each requested replacement of a card or other debit access device.</li> <li>• The replacement fee does not apply when we replace a card upon its expiration.</li> <li>• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> </ul>
	Rush Replacement ATM or Debit Card Fee	\$15.00 per card	<ul style="list-style-type: none"> <li>• Fee for each requested rush delivery of a card or other debit access device.</li> <li>• The Replacement ATM or Debit Card Fee may also apply and would be in addition to the rush delivery fee.</li> <li>• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> </ul>
	Non-Bank of America Teller Withdrawal Fee	For each transaction, the greater of \$5.00 <b>OR</b> 3% of the dollar amount of the transaction, up to a maximum of \$10.00	<ul style="list-style-type: none"> <li>• Fee applies when you authorize another financial institution to use your card or card number to conduct a transaction (such as a withdrawal, transfer, or payment) and the other financial institution processes the transaction as a cash disbursement.</li> </ul>
	International Transaction Fee	3% of the U.S. dollar amount of the transaction	<ul style="list-style-type: none"> <li>• Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country.</li> <li>• Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or MasterCard® converts the transaction into a U.S. dollar amount, and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section below.</li> <li>• See disclosure information that accompanied your card for more information about this fee.</li> </ul>

Please also review the *Deposit Agreement and Disclosures*.

**Other Account Fees and Services (cont.)**

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
<b>ATM Fees</b> <b>Bank of America ATM</b> – an ATM that prominently displays the Bank of America name and logo on the ATM  <b>Non-Bank of America ATM</b> – an ATM that does not prominently display the Bank of America name and logo on the ATM	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	<ul style="list-style-type: none"> <li>Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.</li> </ul>
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S.	\$2.50 each	<ul style="list-style-type: none"> <li>When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer.</li> <li>The non-Bank of America ATM fees do not apply at some ATMs located outside the United States. Call us before you travel internationally for current information about banks participating in the program.</li> <li>See the disclosure information that accompanied your card for other fees that may apply.</li> <li>Non-Bank of America ATM fees are in addition to other account fees that may apply to the transaction, such as a Withdrawal Limit Fee for savings.</li> <li>Preferred Rewards Platinum customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S., and receive a refund of the ATM operator fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S.</li> <li>Preferred Rewards Platinum Honors customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S., and receive a refund of the ATM operator fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S.</li> </ul>
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in a foreign country	\$5.00 each	
<b>Check Cashing</b> – Bank of America customer		No fee	
<b>Check Cashing</b> – Nonrelationship customer	Applies to checks drawn on Bank of America personal accounts	Effective August 15, 2017 - \$8.00 per check for amounts greater than \$50.00.	<p>Effective August 15, 2017, a fee may be assessed to a payee presenting a check that you issued if the payee is not a Bank of America relationship customer.</p> <p>A Bank of America relationship customer is an account owner of a deposit account (checking, savings, CD), Individual Retirement Account (IRA), loan, credit card, mortgage, safe deposit box or a Merrill Edge or Merrill Lynch Investment account.</p>
<b>Check Image Service</b>	Check Image Service Fee	\$3.00 each statement cycle	<ul style="list-style-type: none"> <li>Fee to return images of your cancelled checks with your statement. Applies to each statement cycle during which we return one or more images of your checks.</li> <li>Our Online Banking service allows you to view and print copies of checks that posted to your account within the last 18 months.</li> <li>Preferred Rewards customers qualify for a waiver of this fee.</li> </ul>

**Other Account Fees and Services (cont.)**

<b>Fee Category</b>	<b>Fee Name/Description</b>	<b>Fee Amount</b>	<b>Other Important Information About This Fee</b>
<b>Copies</b>	Check Copy Fee	No fee for the first two copies of each request. After two copies, there is a \$3.00 fee for each copy up to a maximum of \$75.00 per request.	<ul style="list-style-type: none"> <li>Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> <li>This fee does not apply to accounts opened in Massachusetts and New Hampshire.</li> <li>You can avoid the fee by viewing and printing your available checks in Online Banking, instead of ordering the copy from us. For information about what checks are available in Online Banking, please review the Activity tab.</li> </ul>
	Deposit Slips and other Credit Items	No fee for the first two copies of each request. After two copies, there is a \$3.00 fee for each copy up to a maximum of \$75.00 per request.	<ul style="list-style-type: none"> <li>Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> <li>This fee does not apply to accounts opened in Massachusetts and New Hampshire.</li> <li>You can avoid the fee by viewing and printing your available Deposit Slips and other Credit Items, instead of ordering the copy from us. For information about what Deposit Slips and other Credit Items are available in Online Banking, please review the Activity tab.</li> </ul>
	Statement Copy Fee	\$5.00 per copy	<ul style="list-style-type: none"> <li>Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> <li>You can avoid the fee by viewing and printing your available statements in Online Banking, instead of ordering the copy from us. For information about what statements are available in Online Banking, please review the Statements and Documents tab.</li> <li>This fee does not apply to your monthly statement delivery. It only applies when you request paper copies of your statements.</li> </ul>
<b>IRA</b>	IRA and Coverdell ESA Direct Custodian Transfer Processing Fee	\$50.00 each plan, each occurrence	<ul style="list-style-type: none"> <li>Fee for transferring funds to another institution.</li> </ul>
<b>Overdraft Protection Service</b> <i>This optional service can help you avoid declined transactions as well as overdraft and NSF: returned item fees. To apply for this service, please call the number on your account statement or talk to your local financial center associate.</i>	Overdraft Protection Transfer Fee - transfer from a linked Bank of America savings or secondary checking account	\$12.00 each transfer	<ul style="list-style-type: none"> <li>Overdraft Protection transfers are made for the amount required to cover the overdraft and the applicable transfer fee. If your savings or secondary checking account does not have enough available funds to cover the necessary amount, we may decline to make the transfer.</li> <li>Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> <li>Only 1 transfer fee charged per day that a transfer is made.</li> </ul>
	Overdraft Protection Transfer Fee - transfer from a linked Bank of America line of credit	\$12.00 each transfer	<ul style="list-style-type: none"> <li>Overdraft Protection transfers are advances under the terms of the line of credit agreement and are made in increments of \$100. Advances are subject to interest charges or finance charges, as provided in the line of credit agreement. Please see the line of credit agreement.</li> <li>Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> <li>Only 1 transfer fee charged per day that a transfer is made.</li> </ul>
	Overdraft Protection Transfer Fee - transfer from a linked Bank of America credit card	See Credit Card Agreement	<ul style="list-style-type: none"> <li>Overdraft Protection transfers are considered cash advances and may be subject to additional Overdraft Protection cash advance fees. See your Credit Card Agreement for applicable rates and fees.</li> <li>Only 1 transfer fee charged per day that a transfer is made.</li> </ul>

Please also review the *Deposit Agreement and Disclosures*.

**Other Account Fees and Services (cont.)**

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
<b>Overdraft Items (an overdraft item)</b>	Overdraft Item Fee	\$35.00 each item	<ul style="list-style-type: none"> <li>When we determine that you do not have enough available funds in your account to cover an item, then we either authorize and pay the item and overdraw your account (an overdraft item), or we decline or return the item unpaid (an NSF: returned item).</li> <li>Some common examples of items are a check or other transaction made using your checking account number, an everyday non-recurring debit card transaction, a recurring debit card transaction, an ATM withdrawal, an ACH transaction, and an Online or automatic bill payment. Please see the <i>Deposit Agreement and Disclosures</i> for more information about items, overdrafts, declined or returned items and for information about how we process and post items.</li> <li>We do not charge you an Overdraft Item fee on an everyday non-recurring debit card transaction. We also do not charge you an Overdraft Item fee on an ATM transaction unless you agreed to our overdraft practices for that particular ATM transaction. We do charge you an Overdraft Item fee each time we authorize and pay any other type of overdraft transaction. These other types of transactions include checks and other transactions made using your checking account number, recurring debit card transactions, Online and automatic bill payments, and ACH transactions.</li> </ul>
<b>NSF: Returned Items (a returned item)</b>	NSF: Returned Item Fee	\$35.00 each item	<ul style="list-style-type: none"> <li>We do not charge you an NSF: Returned Item fee when we decline an ATM transaction or debit card transaction. We do charge you an NSF: Returned Item fee each time we decline or return any other type of transaction unpaid. These other types of transactions include checks and other transactions made using your checking account number, Online and automatic bill payments, and ACH transactions.</li> <li>We charge you Overdraft Item fees and NSF: Returned Item fees for no more than 4 items each day.</li> <li>For information about our Overdraft Protection plans and overdraft practices and overdraft settings, please see our <i>Deposit Agreement and Disclosures</i> and our <i>What You Need to Know about Overdrafts and Overdraft Fees</i> notice.</li> </ul>
<b>Overdrafts – Extended Overdrawn Balance</b>	Extended Overdrawn Balance Charge	\$35.00 - charged when we determine your account is overdrawn for 5 or more consecutive business days	<ul style="list-style-type: none"> <li>The Extended Overdrawn Balance Charge applies when we determine that your account has been overdrawn for 5 or more consecutive business days. You can avoid this fee by depositing enough available funds in your account to cover your overdraft plus any fees we assessed within the first 5 consecutive business days that your account is overdrawn.</li> <li>For each time that your account is overdrawn 5 or more consecutive business days, we charge one Extended Overdrawn Balance Charge. We charge the fee after the 5th consecutive business day. The Extended Overdrawn Balance Charge is in addition to applicable Overdraft Item Fees and NSF: Returned Item Fees.</li> <li>If an everyday non-recurring debit card transaction or an ATM transaction, for which you did not agree to our overdraft practices, is the transaction that causes your account to become overdrawn, we do not start the 5-business day period. We do start the 5-business day period if another type of transaction either causes or increases the overdraft on your account.</li> </ul>

**Other Account Fees and Services (cont.)**

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
<b>Miscellaneous</b>	Check and Deposit Ticket Orders	Fee varies	<ul style="list-style-type: none"> <li>• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers receive free standard checks or discounts on certain designs.</li> <li>• We may change the fees for check and deposit ticket orders at any time. Visit a financial center or call us at the number on your statement for current fees.</li> </ul>
	Deposited Item Returned or Cashed Item Returned Fee (Returned Item Chargeback Fee)	\$12.00 each domestic item \$15.00 each foreign item	<ul style="list-style-type: none"> <li>• We charge this fee each time a check or other item that we either cashed for you or accepted for deposit to your account is returned to us unpaid.</li> </ul>
	Legal Process Fee	\$125.00 each occurrence (or such other rate as may be set by law)	<ul style="list-style-type: none"> <li>• Fee applies to each legal order or process that directs us to freeze, attach or withhold funds or other property, such as an attachment, levy or garnishment.</li> </ul>
	Stop Payment Fee	\$30.00 each request	<ul style="list-style-type: none"> <li>• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.</li> <li>• There is no charge to place a stop payment on a recurring debit card transaction.</li> </ul>
	Wire Transfers and Drafts, Incoming or Outgoing (U.S. or International)	Fee varies	<ul style="list-style-type: none"> <li>• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of our standard wire fee for an incoming domestic wire transfer. The standard wire fee for incoming international wire transfers is waived for Preferred Rewards (Platinum and Platinum Honors tiers only) customers.</li> <li>• We may change the fees for wire transfers and drafts at any time. Visit a financial center or call us at the number on your statement for current fees.</li> <li>• For an international wire transfer, other financial institutions involved in the wire transfer may also charge fees and deduct their fees from the amount of the wire transfer.</li> </ul>

## Frequently Asked Questions About Accounts

This section covers some of the features and services that may apply to your account.

### What other agreements have terms that apply to my deposit account?

In addition to the terms in this *Schedule of Fees*, the terms in the *Deposit Agreement and Disclosures*, the signature card for your account and the other account opening documents govern your account and are part of the binding contract between you and us for your account. Please read these documents carefully.

### What are paperless statements?

With the paperless statement option, you get your account statement electronically through Online Banking and you do not get a paper statement. You can enroll in paperless statements at a financial center or through Online Banking. When you enroll at a financial center, you'll need to log into Online Banking from your computer to confirm your choice.

### What is a direct deposit?

A direct deposit is an electronic deposit of funds to a checking or savings account.

For Bank of America Core Checking accounts, qualifying direct deposits are deposits of regular monthly income—such as your salary, pension, Social Security benefits—which are made through the automated clearinghouse (ACH) by your employer or other payer.

Other types of transfers and deposits do not qualify for the waiver of the monthly maintenance fee. Examples of non-qualifying transfers and deposits include: teller deposits, wire transfers, non-periodic direct deposits (such as tax refunds or payments for the sale of goods or services), Online Banking transfers, telephone transfers, and ATM transfers and deposits.

### What does variable rate mean?

Funds in an interest bearing checking or savings account earn a variable interest rate. This means that your interest rate and annual percentage yield may change after the account is opened. At our discretion, we may change your interest rate and annual percentage yield at any time.

### What does it mean to link accounts?

You can link some of your other accounts with us either to your Bank of America Interest Checking, Regular Checking or to your Advantage checking account for pricing. When you link another account for pricing, you can use the balances in the other account to help you meet the balance required to avoid the monthly maintenance fee on your checking account. You must tell us what other accounts you want us to link to your checking account. An account can only be linked for pricing to one checking account at a time. We do not link your other accounts for pricing unless you tell us to do so. You may not link a SafeBalance Banking® account to any other account for pricing.

Please see the checking account descriptions in this schedule of fees for information about what accounts can be linked and applicable balance requirements. Some restrictions apply to what accounts can be linked. See below and the *Combined Balance Service* section in the *Deposit Agreement and Disclosures* for information.

When a new account is opened to replace an existing account, we do not automatically link the new account to your checking account for pricing, even if the existing account

was linked. You must tell us to link the new account. As examples, when you refinance your mortgage loan, the refinanced loan is a new account. Whenever we change the account number of your checking account, we close the current checking account and open a new checking account. In both examples, the replacement account is a new account and, if you want us to link it to your checking account for pricing, you need to tell us to link the new account.

For linked accounts, we may send you a monthly statement that reports account information for all of your linked accounts instead of separate statements for each account.

### What Bank of America first mortgage loans can qualify for a waiver of the monthly maintenance fee on a Bank of America Advantage account?

We currently service many mortgage loans we make. If we service your Bank of America first mortgage loan, you can have us link the loan to your Bank of America Advantage checking account. Sometimes we sell mortgage loan servicing to other companies. If we sell the servicing on your mortgage loan, then the loan is no longer eligible to be used for this waiver.

### What limits apply to linking accounts?

Some restrictions apply to what accounts can be linked to a checking account, including the following. You can generally link savings, money market savings, Individual Retirement Account (IRA) and CD, and some checking and Merrill Edge or Merrill Lynch investment accounts to your checking account. You may only link an account to one checking account at a time. To link additional accounts to a checking account, at least one of the owners of the linked additional account must also be an owner of the checking account. You may not link personal and business accounts together. You may link a SafeBalance Banking account to another SafeBalance Banking account for some purposes, but not to any other account for pricing.

You may not link custodial accounts, such as UTMA or UGMA accounts, for pricing or other program benefits.

We may in our discretion place other restrictions on what accounts can be linked.

### Are the statement cycles for linked accounts the same?

When you link accounts for pricing, the statement cycles are generally different. If you use a combined statement for your checking and savings accounts, the statement cycles for the linked checking and savings accounts are generally the same.

### What are combined statements?

A combined statement is one statement that reports activity for your checking account and each deposit account linked to that account, instead of separate statements for each account. In most cases we do not automatically send you a combined statement. You must generally request a combined statement and tell us to link the accounts you want included in the combined statement.

(continued)

When linked accounts are reported on the combined statement, you understand and agree that each owner of any linked account can review information about all other linked accounts. You should not link accounts that you do not want others to see. Please read the information about Combined Statements in the *Deposit Agreement and Disclosures*.

### **What is the transaction date for the savings Withdrawal Limit Fee?**

To determine whether a Withdrawal Limit Fee applies to a withdrawal from your savings account, we count the withdrawal on the date we post it to your account. If you are counting the number of withdrawals you make each monthly statement cycle, please note that the date we count the withdrawal may be different than the date you authorize or make the withdrawal. This means that we may not count the withdrawal until a later statement cycle.

### **What are the transaction limitations on my savings account?**

There is no limit on the number of deposits you may make to your account. You can also make any number of withdrawals and transfers to your account through the financial center, by mail or at an ATM or ATM with Teller Assist (ATA).

However, federal regulations (applied to all U.S. Banks) and the *Deposit Agreement and Disclosures* limit the number of certain types of withdrawals and transfers from a savings account to a total of six each monthly statement cycle (each month for savings accounts with a quarterly statement). This transaction limit applies to the following types of withdrawals or transfers: automatic or pre-authorized transfers, telephone transfers, Online and Mobile Banking transfers or payments, or, if checks or debit cards are allowed on the account, check, draft and point of sale transactions.

If you exceed these limits on more than an occasional basis, we may convert your account to another type of account, like a checking account, and your account may no longer earn interest.

Please note that for savings accounts, we charge a Withdrawal Limit Fee for each withdrawal and transfer of any type in excess of six if the applicable balance requirement is not met. The Withdrawal Limit Fee is separate from the federal regulatory requirements. See the information about this fee in the savings account section on pages 4 and 5.

### **Which employees and retirees are eligible for a waiver of the Monthly Maintenance Fee?**

The fee waiver applies to full-time or part-time employees actively employed by Bank of America and Retirees with at least 10 years of vesting service, and their age plus years of vesting service equal to at least 60 (with no minimum age requirement).

## **Keep the Change® Savings Service**

When you enroll in our Keep the Change savings service, we round up the amount of any Bank of America debit card purchase made by you or a joint owner of your checking account to the next whole dollar amount, and transfer the amount in excess of the purchase price to your savings account.<sup>1</sup>

We aggregate the round-up from purchases that post to your checking account each business day and make a single transfer (the "Keep the Change" transfer) at the end of the business day. If on a business day you do not have sufficient available funds in your checking account, or if any transaction has overdrawn your checking account, we do not

round-up purchases posted on that business day and we cancel the Keep the Change transfer for that day.

If your debit card purchase is subsequently cancelled or reversed, the corresponding Keep the Change transfer will remain in the savings account.<sup>1</sup> We may cancel or modify the Keep the Change service at any time.

<sup>1</sup>If your savings account enrolled in Keep the Change is converted to a checking account, Keep the Change transfers will continue to be made into that account. Should you have any questions on the Keep the Change program, please contact your nearest financial center.

*Keep the Change® Patent No. US 8,301,530B2.*

## **Preferred Rewards**

You are eligible for the Preferred Rewards program when you (i) have an active, eligible personal checking account with Bank of America, and (ii) maintain the balance required for one of the balance tiers in any combination of eligible deposit accounts with Bank of America and/or eligible investment balances with Merrill Edge® or Merrill Lynch. Once you are eligible, you can enroll for program benefits. Enrollment is generally available within three or more business days of eligibility.

The combined balance requirement is calculated based on your average daily balance maintained for a three calendar month period.

Your benefits become effective within one month of your enrollment, or for new accounts within one month of account opening, unless we indicate otherwise. Some benefits are automatically activated upon the effective date of your enrollment and require no action on your part. Some benefits may require you to open a new account or take other action. Some benefits are available based on balances and other requirements without the need to enroll. Read carefully the terms of any offer to understand the action required.

Different benefits are available at different balance tiers. The balance tiers are: Gold, for combined balances at and above \$20,000; Platinum, for combined balances at and above \$50,000; and Platinum Honors, for combined balances at or above \$100,000.

You will qualify for the next higher balance tier when your three-month average combined balances exceed the minimum amount for that balance tier. You will qualify for the benefits of the next higher balance tier starting in the month after the month in which you satisfy the combined balance requirement.

We will perform an annual review of your qualifying balances in the month following the anniversary date of your initial enrollment in the program. The annual review will calculate your three-month average combined balance as of the end of your anniversary month and place you in the balance tier for which you meet the qualification requirements. If the result of the annual review would be to move you to a lower tier, you will have a three-month period after your anniversary month in which to restore your qualifying balance before you are moved to that lower balance tier. If you are moved to a lower balance tier, your benefits may be changed to those of the balance tier for which you qualify without further notice. Please note that while you can be moved to a higher balance tier after any month in which you satisfy the combined balance requirement for that tier, you will only be moved to a lower balance tier as a result of the annual review.

*(continued)*

At the annual review, we will also confirm that you still have an active, eligible personal checking account with Bank of America. If as a result of the annual review you do not qualify for any balance tier, or you no longer have an eligible checking account, and you do not sufficiently restore your balances or open an eligible checking account in the three months after your anniversary month, your qualification will discontinue. Your benefits may then be discontinued immediately without further notice.

You or we may terminate your enrollment at any time.

Only personal accounts that you own, and that are in good standing, count toward your balance requirements and receive benefits. Accounts on which you are a signer but not an owner, or accounts included in your periodic statement on which you are not an owner, are not eligible. SafeBalance Banking® accounts do not count towards the checking account requirement or balance requirements for Preferred Rewards, and SafeBalance Banking accounts do not receive the fee waivers and other benefits of the Preferred Rewards program.

We may change or terminate program benefits at any time, without prior notice.

See the chart below for examples of accounts that do and do not qualify for the combined balance calculation:

<b>Qualify</b>
<ul style="list-style-type: none"> <li>• Accounts on which you are an owner or co-owner, including -                             <ul style="list-style-type: none"> <li>• Bank of America deposit accounts: Checking, Savings, Money Market Savings, CD, and IRA accounts</li> <li>• Merrill Edge and Merrill Lynch investment accounts, such as the Cash Management Account (CMA) and IRA accounts (Traditional, Roth, Rollover, SEP, Simple)</li> <li>• 529 plans appearing on your Merrill Edge or Merrill Lynch statement (except 529 plans owned in Uniform Transfers to Minors Act (UTMA)/Uniform Gifts to Minors Act (UGMA) form)</li> <li>• Revocable grantor trust accounts</li> </ul> </li> </ul>
<b>Does Not Qualify</b>
<ul style="list-style-type: none"> <li>• Accounts on which you're not an owner or co-owner. For example, accounts on which your role is Custodian, Administrator, Power of Attorney, Beneficiary, Guardian, or Executor</li> <li>• Uniform Transfers to Minor Act (UTMA) and Uniform Gifts to Minors Act (UGMA) accounts</li> <li>• Business accounts or commercial accounts</li> <li>• SafeBalance Banking accounts</li> <li>• Irrevocable trust accounts</li> <li>• Employee Benefit plans (such as 401(k) plans)</li> <li>• Annuities</li> </ul>

Bank of America employees and retirees are eligible for additional Preferred Rewards program benefits. If you no longer meet the requirements for employee status, standard program terms apply.

*Merrill Edge® is available through Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S), and consists of the Merrill Edge Advisory Center™ (investment guidance) and self-directed online investing.*

**Notice for Maine Deposit Account Customers:**

If you have a dispute with us regarding your deposit account, you may contact us and attempt to resolve the problem directly. If you feel we failed to resolve the problem, communicate the problem and the resolution you are seeking to:

Bureau of Financial Institutions  
36 State House Station  
Augusta, ME 04333-0036

To file a complaint electronically, you may contact the Bureau of Financial Institutions at the following internet address: [http://www.state.me.us/pfr/bkg/bkg\\_consumer.htm](http://www.state.me.us/pfr/bkg/bkg_consumer.htm)

The Bureau of Financial Institutions will acknowledge receipt of your complaint promptly and investigate your claim. You will be informed of the results of the investigation.

When your complaint involves a federally-chartered financial institution, such as Bank of America, the Bureau of Financial Institutions will refer it to the appropriate federal supervisory agency and inform you to whom it has been referred.

# **Personal Schedule of Fees for SafeBalance Banking®**

*Effective May 19, 2017*

The SafeBalance Banking account is a personal deposit account.



[bankofamerica.com](http://bankofamerica.com)

Applies in all states.

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00-14-9317



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The SafeBalance Banking account is an account you can use to make transactions and pay bills. Since it is not a traditional checking account you cannot write checks with this account.

## Overview

The SafeBalance Banking® account is an account you can use to make deposits, withdrawals and pay bills. It is a checkless checking account, since you cannot write paper checks with this account. It is not a traditional checking account. You can make payments with your debit card, through our Online and Mobile Banking Bill Pay service, a wire transfer, or an Automated Clearing House transaction (ACH), and you can make withdrawals through an ATM or financial center.

Do not order checks from third parties. If a check is presented for payment, it will not be paid even if you have enough money in your account to cover it. You may incur fees from the merchant or other party you were trying to pay when the check is returned.

Your SafeBalance Banking account does not come with overdraft services, which means we do not authorize or pay a transaction unless we believe that you have enough available funds at the time of the transaction. Please see the “Other Important Account Information” section for more details about overdrafts.

Additional terms and limitations of the SafeBalance Banking account are described in this schedule of fees. Please review the account description for details about your account and account fees. Other account fees that can apply to your account are listed in the “Other Account Fees and Services” section.

When you open a deposit account, it is located at a financial center and generally remains at that location until it is closed. If your address is in a state where we do not have a financial center at the time, we may open the account at a financial center in Virginia. If state taxes apply to an account or service, taxes are in addition to the fee amount listed.

We may change the account and services described in this schedule of fees at any time. We may add new terms and conditions. We may delete or amend existing terms and conditions. We may also add new services and convert or discontinue this account or any services at any time.

You can get information about accounts, services and fees not covered in this schedule of fees by visiting a financial center or calling us at the number on your statement.

### Deposit Agreement and Disclosures Amended

Your account and deposit relationship with us are governed by this schedule of fees and the *Deposit Agreement and Disclosures*. Note that since there are no check-writing privileges, references in the *Deposit Agreement and Disclosures* to the ability to write checks and associated rights and obligations do not apply to the SafeBalance Banking account. All other terms and conditions in the *Deposit Agreement and Disclosures* that apply to checking accounts apply to the SafeBalance Banking account except as otherwise amended in this schedule of fees. Please read both agreements carefully. These agreements are part of the binding contract between you and us for your account and deposit relationship. You can also find these agreements at [bankofamerica.com](http://bankofamerica.com). References to the *Personal Schedule of Fees* in the *Deposit Agreement and Disclosures* and in other documents include this schedule of fees.

Other terms and conditions in this schedule of fees amend the *Deposit Agreement and Disclosures*, including information in the “Other Important Account Information” section.

**Information About SafeBalance Banking**

<b>Account</b>	<b>Monthly Maintenance Fee</b>	<b>Features Available with Your SafeBalance Banking Account</b>	<b>Features Not Available with Your SafeBalance Banking Account</b>
<p><b>SafeBalance Banking®</b></p> <ul style="list-style-type: none"> <li>• Non-interest bearing account</li> <li>• Minimum to open - \$25.00</li> </ul>	<p>\$4.95</p> <p>We do not waive the monthly fee.</p>	<ul style="list-style-type: none"> <li>• No Overdraft Item Fees, NSF: Returned Item Fees or Extended Overdrawn Balance Charge</li> <li>• Debit card (Photo Security® feature available) or ATM card</li> <li>• Online and Mobile Banking Service</li> <li>• Online and Mobile Bill Pay Service</li> <li>• Email and Text Alerts</li> <li>• Keep the Change® Savings Service</li> </ul>	<p>The SafeBalance Banking account is different from a traditional checking account. It has important limitations that you should review. If you want any of the functions or services listed below, it might not be the right account for you.</p> <p>The following features are <b>not</b> available with your SafeBalance Banking account:</p> <ul style="list-style-type: none"> <li>• Checks. Paper checks written by you or others on the account will not be paid.                             <ul style="list-style-type: none"> <li>- Do not buy checks from any source, such as checks you see advertised on the internet or in the newspaper or any other third parties.</li> <li>- Be careful when providing your account and routing numbers to merchants for a payment since they may process the payment as a check which will be rejected.</li> </ul> </li> <li>• Overdraft Protection Service to or from a linked account.</li> <li>• Overdraft services. Your account is set to a “Decline All” transactions overdraft setting. This means that if you do not have sufficient available funds in your account to cover an item, the item will be returned unpaid. You may be assessed a fee by a merchant if this happens. Please see the “Other Important Account Information” section for more details.</li> </ul> <p>Balances do not count towards Preferred Rewards, Banking Rewards for Wealth Management or other relationship pricing programs, and the SafeBalance Banking account does not receive the fee waivers and other benefits of the Preferred Rewards program.</p> <p>Affinity Banking is not available to be added to your SafeBalance Banking account or debit card.</p>

**Other Account Fees and Services**

<b>Fee Category</b>	<b>Fee Name/Description</b>	<b>Fee Amount</b>	<b>Other Important Information About This Fee</b>
<b>ATM Card and Debit Card Fees</b>	Replacement ATM or Debit Card Fee	\$5.00 per card	<ul style="list-style-type: none"> <li>• Fee for each requested replacement of a card or other debit access device.</li> <li>• The replacement fee does not apply when we replace a card upon its expiration.</li> </ul>
	Rush Replacement ATM or Debit Card Fee	\$15.00 per card	<ul style="list-style-type: none"> <li>• Fee for each requested rush delivery of a card or other debit access device.</li> <li>• The Replacement ATM or Debit Card Fee may also apply and would be in addition to the rush delivery fee.</li> </ul>
	Non-Bank of America Teller Withdrawal Fee	For each transaction, the greater of \$5.00 <b>OR</b> 3% of the dollar amount of the transaction, up to a maximum of \$10.00	<ul style="list-style-type: none"> <li>• Fee applies when you authorize another financial institution to use your card or card number to conduct a transaction (such as a withdrawal, transfer, or payment) and the other financial institution processes the transaction as a cash disbursement.</li> </ul>
	International Transaction Fee	3% of the U.S. dollar amount of the transaction	<ul style="list-style-type: none"> <li>• Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country.</li> <li>• Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or MasterCard® converts the transaction into a U.S. dollar amount, and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section below.</li> <li>• See disclosure information that accompanied your card for more information about this fee.</li> </ul>
<b>ATM Fees</b> <b>Bank of America ATM</b> —an ATM that prominently displays the Bank of America name and logo on the ATM  <b>Non-Bank of America ATM</b> —an ATM that does not prominently display the Bank of America name and logo on the ATM	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	<ul style="list-style-type: none"> <li>• Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.</li> </ul>
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S.	\$2.50 each	<ul style="list-style-type: none"> <li>• When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer.</li> <li>• The non-Bank of America ATM fees do not apply at some ATMs located outside the United States. Call us before you travel internationally for current information about banks participating in the program.</li> <li>• See the disclosure information that accompanied your card for other fees that may apply.</li> <li>• Non-Bank of America ATM fees are in addition to other account fees that may apply to the transaction, such as a Withdrawal Limit Fee for savings.</li> </ul>
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in a foreign country	\$5.00 each	

Please also review the *Deposit Agreement and Disclosures*.

**Other Account Fees and Services *continued***

<b>Fee Category</b>	<b>Fee Name/Description</b>	<b>Fee Amount</b>	<b>Other Important Information About This Fee</b>
<b>Check Cashing</b> – Bank of America customer		No fee	Effective August 15, 2017, a fee may be assessed to a payee presenting a check that you issued through Online or Mobile Bill Pay if the payee is not a Bank of America relationship customer.
<b>Check Cashing</b> – Nonrelationship customer	Applies to checks issued through Online or Mobile Bill Pay from SafeBalance Banking accounts	Effective August 15, 2017 - \$8.00 per check for amounts greater than \$50.00.	A Bank of America relationship customer is an account owner of a deposit account (checking, savings, CD), Individual Retirement Account (IRA), loan, credit card, mortgage, safe deposit box or a Merrill Edge or Merrill Lynch Investment account.
<b>Copies</b>	Deposit Slips and other Credit Items	No fee for the first two copies of each request. After two copies, there is a \$3.00 fee for each copy up to a maximum of \$75.00 per request.	<ul style="list-style-type: none"> <li>This fee does not apply to accounts opened in Massachusetts and New Hampshire.</li> <li>You can avoid the fee by viewing and printing your available Deposit Slips and other Credit Items, instead of ordering the copy from us. For information about what Deposit Slips and other Credit Items are available in Online Banking, please review the Activity tab.</li> </ul>
	Statement Copy Fee	\$5.00 per copy	<ul style="list-style-type: none"> <li>You can avoid the fee by viewing and printing your available statements in Online Banking, instead of ordering the copy from us. For information about what statements are available in Online Banking, please review the Statements and Documents tab.</li> <li>This fee does not apply to your monthly statement delivery. It only applies when you request paper copies of your statements.</li> </ul>
<b>Miscellaneous</b>	Deposit Ticket Orders	Fee varies	<ul style="list-style-type: none"> <li>We may change the fees for deposit ticket orders at any time. Visit a financial center or call us at the number on your statement for current fees.</li> </ul>
	Deposited Item Returned or Cashed Item Returned Fee (Returned Item Chargeback Fee)	\$12.00 each domestic item \$15.00 each foreign item	<ul style="list-style-type: none"> <li>We charge this fee each time an item that we either cashed for you or accepted for deposit to your account is returned to us unpaid.</li> </ul>
	Legal Process Fee	\$125.00 each occurrence (or such other rate as may be set by law)	<ul style="list-style-type: none"> <li>Fee applies to each legal order or process that directs us to freeze, attach or withhold funds or other property, such as an attachment, levy or garnishment.</li> </ul>
	Stop Payment Fee	\$30.00 each request	<ul style="list-style-type: none"> <li>There is no charge to place a stop payment on a recurring debit card transaction.</li> </ul>
	Wire Transfers and Drafts, Incoming or Outgoing (U.S. or International)	Fee varies	<ul style="list-style-type: none"> <li>We may change the fees for wire transfers and drafts at any time. Visit a financial center or call us at the number on your statement for current fees.</li> <li>For an international wire transfer, other financial institutions involved in the wire transfer may also charge fees and deduct their fees from the amount of the wire transfer.</li> </ul>

Please also review the *Deposit Agreement and Disclosures*.

## Other Important Account Information for SafeBalance Banking

This section covers some of the features and services that may apply to your account and amends certain sections of the *Deposit Agreement and Disclosures*.

### How does the Deposit Agreement and Disclosures apply to my SafeBalance Banking account?

In addition to the terms in this schedule of fees, the terms in the *Deposit Agreement and Disclosures*, the signature card for your account and the other account opening documents govern your account and are part of the binding contract between you and us for your account. Please read these documents carefully. Certain sections of the *Deposit Agreement and Disclosures* that are changed are noted in this section and in the Overview.

**NOTE:** The following two questions amend the "Insufficient Funds – Overdrafts and Returned Items" section of the *Deposit Agreement and Disclosures*. That section is deleted and replaced with the information in these two questions.

### My account is overdrawn. I thought I could not overdraft my SafeBalance Banking account?

While we attempt to limit overdrafts on your SafeBalance Banking account, at times overdrafts still occur. When we determine that you do not have enough available funds in your account to cover an item, then we consider the item to be an insufficient funds item. Without notice to you, we may overdraw your account (an overdraft item) or we decline or return the insufficient funds item without payment (a returned item). We will not charge you an Overdraft or NSF: Returned Item Fee or an Extended Overdrawn Balance Charge if this happens. However, you may be assessed a fee by the merchant. If we overdraw your account, you agree to repay us immediately, without notice or demand from us. We ordinarily use deposits you or others make to your account to pay overdrafts, fees and other amounts you owe us.

Sometimes funds in your account are not available to cover your items. When we determine that funds in your account are subject to a hold, dispute, or legal process, then these funds are not available to cover your items. We usually make this determination once at the end of the day when we process items. Examples of holds include deposit holds, holds related to cash withdrawals, and authorization holds we place on the account for debit card transactions. We may also treat as an insufficient funds item each fee that creates an overdraft and each deposited item returned to us unpaid that creates an overdraft.

Here is an example of how your account might still become overdrawn. You use your debit card to pay for your meal at a restaurant. The restaurant asks us to authorize the transaction for the amount of the meal. We authorize the transaction because we determine you have enough available funds in your account at this time. However, if you decide to use your debit card to leave a tip and add the amount of the tip to the cost of the meal, that will increase the total amount of the transaction. When the transaction is processed that night, you may not have enough funds in your account to cover the increased amount of the transaction and it will overdraw your account. This means, unless you promptly transfer or deposit enough available funds, when we receive the debit card transaction, it will overdraw your account. However, you will not be charged an overdraft fee by the Bank.

### What overdraft setting is applied to the SafeBalance Banking account?

We automatically apply our Decline All transactions overdraft setting to your SafeBalance Banking account. With the Decline All transactions overdraft setting, we do not authorize or pay any transaction unless we determine that at the time of the transaction you appear to have enough available funds in your account to cover the transaction. This means that we will decline or return these transactions unpaid. You may be assessed a fee by the merchant if this happens.

### What happens if a merchant wants to use my account number and routing number for a payment?

Be careful when you give out your account number and routing number to an originator that you authorize to process debits from your account. At times, an originator may process such a payment as a check and submit it to us instead of an ACH (Automated Clearing House) transaction. Those checks will be rejected and not paid. You may be charged a fee by the originator if this happens. If you give anyone your account number and routing number, make sure it is for an ACH transaction only. You may want to ask if the merchant can use your debit card number instead. Please see the *Deposit Agreement and Disclosures* for more details about ACH transactions.

### How do I pay my bills if I don't have checks? What if I need to write a check?

You can pay bills using our Online and Mobile Bill Pay service or transfers, your debit card, cash, or by making electronic payments. If you find that you need to write checks on a regular basis and these alternatives do not work for you, you may need a traditional checking account that offers check-writing capability. Cashier's checks are also available for a fee in our financial centers.

### What happens if my employer asks for a voided check for direct deposit?

Since the SafeBalance Banking account does not include checks, you cannot provide a voided check. You can provide the account number and routing number and indicate that it is a checking account so that your employer can set up a direct deposit to your account. Or, you can complete the printable enrollment form in Online Banking. You can also ask us for a direct deposit enrollment form that you can provide to your employer.

### How does Online and Mobile Bill Pay work with the SafeBalance Banking account?

SafeBalance Banking accounts have different Bill Pay features than traditional checking accounts. When you use Online and Mobile Bill Pay with your SafeBalance Banking account, payments will be withdrawn from your account before delivery to the payee. The date that payments will be withdrawn from your account and the delivery date of the payments will be shown in Online Bill Pay. If there are not enough funds in your account when we attempt to withdraw the payment amount, the payment will not be sent. Please refer to the *Online Banking Service Agreement* for more details on how Bill Pay works for SafeBalance Banking accounts.

(continued)

## Other Important Account Information for SafeBalance Banking *continued*

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### What happens if I want a different account instead of my SafeBalance Banking account?

To change to a different account type, you must open a new checking account. If you choose to open a new checking account, you will be assigned a new account number. This will impact any situation where you use your account number, such as any direct deposits to or automatic withdrawals from your account. You will need to provide the updated account number to any third parties that you gave the original account number to for payments or direct deposits. You can close your SafeBalance Banking account but keep in mind any payments that may be outstanding; these payments may be rejected. Please look closely at the terms and conditions of your new account since important features such as fees and overdrafts will change.

If you use our Online and Mobile Bill Pay service, payments will be made differently. Please see the *Online Banking Service Agreement* for more details.

### What happens if I want a SafeBalance Banking account instead of my current account?

You must open a new SafeBalance Banking account. If you choose to do this you will be assigned a new account number for your new SafeBalance Banking account. This will impact any situation where you use your account number, such as any direct deposits to or automatic withdrawals from your account. You will need to provide the updated account number to any third parties you gave the original account number to for payments or direct deposits. You can close your existing account but keep in mind any checks or other payments that may be outstanding.

Some other important things to know about SafeBalance Banking include:

- You cannot write paper checks with the SafeBalance Banking account. Please see the account description on page 2 for more details and restrictions.
- You cannot use checks from your existing account with your SafeBalance Banking account and any outstanding checks will not be paid once the existing account is closed. This may result in fees assessed by merchants for returned items ("bounced check" fees).
- Overdrafts will typically not be paid on your new SafeBalance Banking account. If you do not have sufficient funds in your account to cover an item, the item will usually be returned unpaid. You may be assessed a fee by a merchant if this happens. There are circumstances when an overdraft will occur. Please see the other questions in this section for more details on how that can happen.
- You will have a separate statement for your SafeBalance Banking account.
- If you use our Online and Mobile Bill Pay service with your new SafeBalance Banking account, payments will be made differently. Please see "How does Online and Mobile Bill Pay work with the SafeBalance Banking account" on page 5.

Please review the product description on page 2 and this schedule of fees for more information about the SafeBalance Banking account.

### What happens if I have to choose between "Checking" and "Savings" to start a transaction?

Please choose "Checking" if you are trying to access your SafeBalance Banking account. While the SafeBalance Banking account does not have paper checks, choosing this option will allow you to access the funds in your SafeBalance Banking account if you are at an ATM or need to complete a deposit slip.

### Can I combine my SafeBalance Banking account statement with my other deposit account statements?

No, combined statements are not available with the SafeBalance Banking account. The "Combined Statements" section of the *Deposit Agreement and Disclosures* is amended accordingly.

### What does it mean to link accounts for pricing?

Some of Bank of America's accounts can be linked for pricing. However, the SafeBalance Banking account cannot be linked to any other account for pricing purposes. If you have another account with Bank of America, like a CD or savings account, you won't be able to link it to the SafeBalance Banking account for pricing purposes. The "Combined Balance Service" and "Limits on Linking Accounts" sections of the *Deposit Agreement and Disclosures* do not apply to the SafeBalance Banking account.

### What are paperless statements?

With the paperless statement option, you get your account statement electronically through Online Banking and you do not get a paper statement. You can enroll in paperless statements at a financial center or through Online Banking. When you enroll at a financial center, you'll need to log into Online Banking from your computer to confirm your choice.

## Keep the Change® Savings Service

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When you enroll in our Keep the Change savings service, we round up the amount of any Bank of America debit card purchase made by you or a joint owner of your SafeBalance Banking account to the next whole dollar amount, and transfer the amount in excess of the purchase price to your savings account.<sup>1</sup>

We aggregate the round-up from purchases that post to your SafeBalance Banking account each business day and make a single transfer (the "Keep the Change" transfer) at the end of the business day. If on a business day you do not have sufficient available funds in your SafeBalance Banking account, or if any transaction has overdrawn your checking account, we do not round-up purchases posted on that business day and we cancel the Keep the Change transfer for that day.

If your debit card purchase is subsequently cancelled or reversed, the corresponding Keep the Change transfer will remain in the savings account.<sup>1</sup> We may cancel or modify the Keep the Change service at any time.

<sup>1</sup>If your savings account enrolled in Keep the Change is converted to a checking account, Keep the Change transfers will continue to be made into that account. Should you have any questions on the Keep the Change program, please contact your nearest financial center.

*Keep the Change*® Patent No. US 8,301,530B2.

### **Notice for Maine Deposit Account Customers:**

If you have a dispute with us regarding your deposit account, you may contact us and attempt to resolve the problem directly. If you feel we failed to resolve the problem, communicate the problem and the resolution you are seeking to:

Bureau of Financial Institutions  
36 State House Station  
Augusta, ME 04333-0036

To file a complaint electronically, you may contact the Bureau of Financial Institutions at the following internet address: [http://www.state.me.us/pfr/bkg/bkg\\_consumer.htm](http://www.state.me.us/pfr/bkg/bkg_consumer.htm)

The Bureau of Financial Institutions will acknowledge receipt of your complaint promptly and investigate your claim. You will be informed of the results of the investigation.

When your complaint involves a federally-chartered financial institution, such as Bank of America, the Bureau of Financial Institutions will refer it to the appropriate federal supervisory agency and inform you to whom it has been referred.