

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

)	
EDWARD TEDESCO, individually and on)	
behalf of others similarly situated,)	
)	
Plaintiffs,)	
)	No. 3:07 CV 1640 (JCH)
vs.)	
)	
BANK OF AMERICA CORPORATION, et al.,)	
)	
Defendants.)	
)	
)	

FINAL ORDER AND JUDGMENT

This matter, having come to the Court for determination whether the Settlement Agreement executed on December 7, 2010, and as amended on January 4, 2011 and March 16, 2011, by Plaintiff, on behalf of the Class, and Defendants, should be approved as fair, reasonable and adequate, the Court having considered the submissions of the parties, and the evidence and arguments at the Fairness Hearing, it is **HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The terms that are capitalized in this Final Order and Judgment shall have the meaning ascribed to those terms in the Settlement Agreement, which is attached hereto as Exhibit 1.

2. The Court has jurisdiction over the subject matter of this action, the Parties and the Class.

3. This Court finds that the Class, as provisionally certified in this Court's Preliminary Approval Order of January 11, 2011 satisfies all requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(1)(A) and (b)(2). Specifically, this Court finds that the Class is so numerous that joinder of all Class Members is impracticable, that there are common questions of law and fact, that the claims of Plaintiff are typical of the claims of the Class and that Plaintiff and Class Counsel have fairly and adequately protected the interests of the Class. This Court further finds that the prosecution of separate actions by the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants and that Defendants have acted or refused to act on grounds generally applicable to the Class, making final injunctive relief with respect to the Class appropriate.

4. This Court reaffirms its Order appointing Plaintiff Edward Tedesco as representative of the Class and appointing Thomas G. Moukawsher of Moukawsher and Walsh LLC as Class Counsel.

5. The Notice was properly mailed, as established by the Declaration of Abigail Schwartz dated May 19, 2011. (*See* Edward Tedesco's Memorandum of Law in Support of Final Approval of Class Settlement, Ex. 12.) This Court finds that the Notice fairly and adequately informed the Class of the Settlement and their rights and was the best notice practicable, and fully complied with Federal Rule of Civil Procedure 23 and due process. The costs of Notice and the expenses of settlement administration shall be paid by the Plan as an administrative expense.

6. The Settlement Agreement is approved as fair, reasonable and adequate and in the best interests of the Class, and the Parties are directed to implement its terms. Upon the Effective Date, by virtue of this Final Order and Judgment, the Released Parties shall be released from the Released Claims, and the Class shall be bound by a covenant not to sue the Released Parties in connection with the Released Claims. Schedule A to this Final Order and Judgment, which is attached to Class Counsel's Unopposed Motion to File Schedule A to the Final Order and Judgment Under Seal ("Schedule A") and is also attached hereto, contains a list of the Class Members who have been identified by the Parties. Upon the Effective Date, each Class Member identified in Schedule A shall be entitled to a Settlement Amount in the amount set forth in Schedule A.¹

7. The Class is permanently enjoined from instituting, asserting or prosecuting, in any capacity, any action or proceeding arising out of or related to the Released Claims against any Released Party.

8. This Litigation is dismissed with prejudice and without costs, except as provided in a separate order on Class Counsel's Fee and Expense Application.

9. This Court is awarding, by separate order of this date, fees and expenses to Class Counsel, and an incentive award to Plaintiff, each of which shall be paid by the Plan as an administrative expense.

10. The Settlement Agreement is not, and shall not be construed to be, an admission of liability or wrongdoing by any Defendant, and this Court makes no further finding or

¹ The Settlement Amounts set forth in Schedule A do not include the value of any Interest as set forth in Section 3.2 of the Settlement Agreement.

determination. Neither the Settlement Agreement nor any of the proceedings in connection therewith shall be ordered or received in evidence for any purpose, except that Defendants may submit this Final Order and Judgment to support a claim of *res judicata*, collateral estoppel, release or any theory of claim or issue preclusion, or they may submit this Final Order and Judgment in any action to enforce the injunctive provisions of paragraph 7.

11. Without affecting the finality of this Judgment, this Court retains jurisdiction over the administration, interpretation, effectuation and enforcement of this Settlement.

Date: June 2, 2011

/s/ Janet C. Hall

Janet C. Hall
United States District Judge

EXHIBIT 1

TO FINAL ORDER AND JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

EDWARD TEDESCO, individually and on)	
behalf of others similarly situated,)	
)	
Plaintiffs,)	
)	No. 3:07 CV 1640 (JCH)
vs.)	
)	
BANK OF AMERICA CORPORATION, et al.,)	
)	
Defendants.)	
)	
)	
)	

**CLASS ACTION
SETTLEMENT AGREEMENT**

This Agreement of Settlement and Compromise (“Settlement Agreement” or “Agreement”) is entered into this 4th day of January 2011, by and between Plaintiff Edward Tedesco, on his own behalf and on behalf of the plaintiff Class defined herein, and Defendants Bank of America Corporation and the Bank of America Pension Plan for Legacy Fleet (now a component of the Bank of America Pension Plan for Legacy Companies).

RECITALS

1. This putative class action lawsuit was filed on November 6, 2007.¹ An Amended Complaint was filed on February 19, 2008, and a Second Amended Complaint was filed on September 16, 2008.

2. Plaintiff’s Second Amended Complaint alleges that Defendants violated the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), in connection with

¹ Plaintiff and Bruce Wilson jointly filed this Litigation. Mr. Wilson, however, is not a member of the Class, and thus is not a party to this Settlement Agreement. Mr. Wilson and Defendants have entered into a separate settlement agreement to resolve his individual claims.

(i) the January 1, 1989 restatement of the Retirement Plan of The First National Bank of Boston and Certain Affiliated Companies that adopted a cash balance formula (the “1989 Amendment Claims”) and (ii) the January 1, 1997 restatement of the BankBoston Cash Balance Retirement Plan (the “1997 Restatement Claims”).² The Second Amended Complaint asserts five claims: (1) inadequate notice under ERISA § 204(h); (2) inadequate Summary Plan Description under ERISA § 102; (3) failure to explain relative values under ERISA § 203(e) and § 205(g); (4) breach of fiduciary duty under ERISA § 404; and (5) age discrimination under ERISA § 204(b)(1)(H).

3. On December 30, 2008, the Court granted the Parties’ motion for the entry of a Stipulation for Reference to Alternative Dispute Resolution. The Parties thereafter engaged in numerous mediation sessions, including multiple sessions with Professor Eric D. Green of Resolutions LLC (the “Mediator”).

4. In consultation with the Mediator, and with his agreement, the Parties agreed to focus first on the 1989 Amendment Claims. As a result of months of mediation, including consultations by Plaintiff with an actuarial consultant, Plaintiff agreed to withdraw his 1989 Amendment Claims and filed a Motion to Withdraw Claims Related to the 1989 Plan Amendment on March 10, 2010. The Court granted this motion on March 24, 2010.

Accordingly, the 1997 Restatement Claims are the only remaining claims in the Litigation.

5. Plaintiff and the Class are represented by counsel experienced in ERISA litigation. Class Counsel believes, based on an analysis of the facts and the law, that the settlement is fair, reasonable and adequate. Class Counsel has undertaken factual analysis and

² The Retirement Plan of The First National Bank of Boston and Certain Affiliated Companies was renamed the BankBoston Cash Balance Retirement Plan. Following various mergers, the name of the Plan is now the Bank of America Pension Plan for Legacy Fleet, a component document of the Bank of America Pension Plan for Legacy Companies.

has been assisted by a retained expert in his analysis. Class Counsel also has considered the existing law applicable to Plaintiff's claims as well as the uncertainties as to how the law may develop in the future. Class Counsel has engaged in efforts to verify and assure the accuracy of the data relied upon in the calculations required by the Settlement.

6. Plaintiff and Class Counsel – without conceding any lack of merit to the claims alleged – have concluded that this Settlement is in the best interests of the Class. The Settlement provides the certainty of substantial immediate benefits, while continued litigation encompasses significant risk and delay.

7. Defendants have at all times denied the allegations of Plaintiff's Complaint, Amended Complaint, and Second Amended Complaint and continue to deny all of Plaintiff's claims. Defendants have nonetheless determined that this Settlement is desirable to bring an end to this litigation. Entry into this Settlement Agreement is not an admission of any liability by Defendants.

8. Plaintiff and Defendants have determined to settle this action on the terms and conditions stated herein. In consideration of the mutual covenants and promises in this Settlement Agreement, the Parties hereto agree to a full and complete settlement of all claims that were or could have been brought by or on behalf of Plaintiff or any member of the Class.

9. The Agreement was executed on December 7, 2010. The Parties subsequently determined that the Class definition set forth in Section 1.5 of the Agreement needed to be amended to include certain participants in the BayBanks Pension Plan. Accordingly, the Parties are amending and restating the Agreement to reflect the changes to Section 1.5, as well as corresponding language to Exhibit A and Exhibit 1 thereto, as of the date set forth above.

1. DEFINITIONS

The following terms, used in capitalized form, have the meanings defined below, whether used in singular or plural form. Terms defined elsewhere in this Agreement, identified by quotation marks, have the meanings there ascribed.

1.1 1997 Cash Balance Restatement. The 1997 Cash Balance Restatement is the January 1, 1997 restatement of the BankBoston Cash Balance Retirement Plan.

1.2 Bank of America. Bank of America Corporation is a Delaware corporation and, as of April 1, 2004, the successor to FleetBoston Financial Corporation, which was the successor to BankBoston Corporation.

1.3 Beneficiary. A Beneficiary includes (a) a person designated by a Participant under the terms of the Plan to receive any benefit in the event of the Participant's death, or (b) as otherwise provided by the terms of the Plan, or (c) alternate payees under Qualified Domestic Relations Orders.

1.4 Cash Balance Account. A Cash Balance Account is a notional account established for each Participant pursuant to Article 4 of the Plan.

1.5 Class. The Class includes any and all persons with a vested benefit who are former or current participants assigned hypothetical cash balance accounts under the FleetBoston Financial Pension Plan who were also participants in (a) the BankBoston Cash Balance Retirement Plan on December 31, 1996 and January 1, 1997 or (b) the BayBanks Pension Plan on December 31, 1996 and the BankBoston Cash Balance Retirement Plan on January 1, 1997. To be within the class definition, a putative class member must: (1) have earned a vested benefit; (2) have participated in (a) the BankBoston Cash Balance Retirement Plan on December 31, 1996 and January 1, 1997 or (b) the BayBanks Pension Plan on December 31, 1996 and the

BankBoston Cash Balance Retirement Plan on January 1, 1997; and (3) have been employed by FleetBoston Financial Corporation on or after January 1, 2001, the date on which BankBoston Cash Balance Retirement Plan participants became FleetBoston Financial Pension Plan participants and were assigned FleetBoston Financial Pension Plan hypothetical cash balance accounts.

1.6 Class Counsel. Class Counsel is Thomas G. Moukawsher of Moukawsher & Walsh LLC.

1.7 Class Member or Participant. A Class Member or Participant is any member of the Class.

1.8 Code. The Code is the Internal Revenue Code of 1986, as amended.

1.9 Court. The Court is the United States District Court for the District of Connecticut.

1.10 Defendants. The Defendants are Bank of America Corporation and the Bank of America Pension Plan for Legacy Fleet (now a component of the Bank of America Pension Plan for Legacy Companies).

1.11 Effective Date. The Effective Date is the latest of the dates when (a) the Court has entered a Final Order and Judgment in the form of Exhibit C to this Settlement Agreement, either without substantive change or with such changes as Defendants have expressly approved in writing, and the time for appeal of such Final Order and Judgment has expired; (b) if an appeal has been taken, the Final Order and Judgment has been affirmed in all material respects and the time for any further appeal or other challenge to the Final Order and Judgment has expired; and (c) Defendants have secured a favorable determination letter from the IRS with respect to the Settlement Plan Amendment.

1.12 ERISA. ERISA is the Employee Retirement Income Security Act of 1974, as amended.

1.13 Fairness Hearing. The Fairness Hearing is the hearing before the Court pursuant to Federal Rule of Civil Procedure 23(e) to certify the Class, determine whether the Settlement Agreement is fair, reasonable and adequate and to consider Class Counsel's Fee and Expense Application, and the request for an incentive payment to Plaintiff.

1.14 Fee and Expense Application. The Fee and Expense Application is the petition, to be filed by Class Counsel, seeking approval of an award of reasonable attorneys' fees and expenses, not to exceed the amount specified in Section 6.1 of this Settlement Agreement.

1.15 Final Approval. Final Approval is the entry of the Final Order and Judgment determining the settlement to be fair, reasonable and adequate, in the form of Exhibit C to this Settlement Agreement.

1.16 Final Order and Judgment. The Final Order and Judgment is a Final Order and Judgment in the form attached hereto as Exhibit C.

1.17 Interest. Interest on each Class Member's Settlement Amount will be calculated at the Plan rate and added to each Class Member's Settlement Amount, if applicable, in accordance with the terms of Section 3.2 of this Settlement Agreement.

1.18 IRS. The IRS is the Internal Revenue Service.

1.19 Litigation. The Litigation is the above-captioned action.

1.20 New Cash Balance Account. The New Cash Balance Account is the account established pursuant to Section 4.2 of this Settlement Agreement.

1.21 Notice. Notice consists of the Notice to the Class, in the form attached as Exhibit 1 to the Preliminary Approval Order. The Notice shall be disseminated by first class mailing to

all Class Members for whom addresses are available as provided in the Preliminary Approval Order. The Settlement Administrator shall make reasonable efforts to locate and send a second mail Notice by first class mailing to those Class Members whose original mail Notice is returned as undeliverable.

1.22 Parties. The Parties are the Plaintiff and the Defendants.

1.23 Plaintiff. The Plaintiff is Edward Tedesco.

1.24 Plan. The Plan is the Bank of America Pension Plan for Legacy Fleet, a component document of the Bank of America Pension Plan for Legacy Companies (as amended and restated effective as of January 1, 2009).

1.25 Plan of Allocation. The Plan of Allocation is the description of the allocation of the Settlement Amounts and is attached hereto as Exhibit A.

1.26 Preliminary Approval. Preliminary Approval is the entry of an Order by the Court, in the form attached hereto as Exhibit B, that, *inter alia*, (a) provisionally certifies the Class for settlement purposes only; (b) determines that the proposed Settlement Agreement has been negotiated at arms-length and is sufficiently fair, reasonable and adequate and in the best interests of the Plaintiff and the Class for purposes of proceeding to a hearing on Final Approval; (c) determines that the Notice and the plan of dissemination of the Notice fully complies with the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the Settlement of this Litigation; and (d) establishes a schedule setting forth the dates for (i) filing the Fee and Expense Application, (ii) filing objections to the Settlement Agreement or Fee and Expense Application by the Class, (iii) filing responses thereto, and (iv) the Fairness Hearing.

1.27 Preliminary Approval Order. The Preliminary Approval Order is an Order in the form attached hereto as Exhibit B.

1.28 Prior Annuity Benefit. A Prior Annuity Benefit is the benefit earned by certain Class Members and that was converted to a cash balance benefit pursuant to Section 4.3 of the 1997 Restatement.

1.29 Released Claims. The Released Claims shall have the meaning set forth in Section 5.2 of this Agreement.

1.30 Released Parties. The Released Parties are Defendants, their past or present subsidiaries, parents, affiliates, successors, predecessors, officers, directors, fiduciaries, agents, employees, attorneys, auditors, accountants, insurers and re-insurers, and the legal representatives, heirs, executors, administrators, successors-in-interest or assigns of any of the them.

1.31 Reserve. Approximately 3.85% of the total value of the Settlement Amounts (\$17,000,000 less the Plaintiff's proposed incentive payment of \$10,000), which equals \$653,200, shall be reserved to address Class membership or allocation issues. Prior to the Fairness Hearing, any portion of the Reserve may be allocated to Class Members on a *pro rata* basis as set forth in Paragraph 5 of the Plan of Allocation, which is attached hereto as Exhibit A.

1.32 Service Groups. Service Groups are years of service cohorts that encompass all Class Members within certain ranges of years of service as of January 1, 2010. Each Class Member is placed into a Service Group for purposes of calculating that Class Member's Settlement Amount.

1.33 Settlement. The Settlement is the compromise and settlement embodied in this Settlement Agreement.

1.34 Settlement Administrator. The Settlement Administrator is Rust Consulting, Inc.

1.35 Settlement Amount. The Settlement Amount is the amount determined under Section 3.1 to which each Participant is entitled. In the event that a Participant or Beneficiary previously received an overpayment of benefits under the Plan, nothing in this Settlement Agreement shall limit the Defendants' power and authority as reflected in Section 17.9 of the Plan to offset the amount of the prior overpayment against future benefit payments or any amount allocable under this Settlement Agreement.

1.36 Settlement Plan Amendment. The Settlement Plan Amendment is the amendment to the Plan, drafted by Defendants and submitted to the IRS for the purpose of securing a favorable determination letter, that will implement the terms of this Settlement Agreement.

2. SETTLEMENT APPROVAL PROCESS

2.1 Class Certification. As part of his application to the Court for entry of the Preliminary Approval Order, Plaintiff will move to certify the Class for settlement purposes only. Class Counsel shall provide Defendants with a draft of the motion for preliminary approval prior to filing, and Defendants shall not oppose the motion, including the certification of a class for settlement purposes only, so long as it is reasonable and consistent with the provisions of this Agreement.

2.1.1 Limitation on Effect of Certification. The certification of any Class for settlement purposes only shall not constitute, in this or any other proceeding, an admission of any kind by Defendants, including that certification of a class for trial purposes is appropriate or proper or that Plaintiff could establish that any of his claims is suitable for class treatment in the

absence of a settlement. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or a binding determination or agreement by Defendants that the requirements for certification are satisfied. In such circumstances, Defendants expressly reserve all rights to challenge class certification on all available grounds as if no Class had been certified for settlement purposes, and no reference to the prior certification of a Class for settlement purposes, or any documents related thereto, shall be made for any purpose.

2.2 Preliminary Approval. Plaintiff shall request Preliminary Approval of the Settlement Agreement through entry of an order in the form of Exhibit B. Plaintiff shall file a motion for Preliminary Approval as soon as practicable after execution of this Agreement. The Preliminary Approval Order submitted to the Court shall:

- a. preliminarily approve the Settlement Agreement as fair, reasonable and adequate and in the best interests of the Plaintiff and the Class;
- b. provisionally certify the Class for settlement purposes only as provided in this Agreement;
- c. appoint Thomas G. Moukawsher of Moukawsher & Walsh LLC as counsel for the Class;
- d. appoint Edward Tedesco as the Class representative;
- e. approve as the best notice practicable and as due and sufficient notice the form of Notice attached as Exhibit 1 to the Preliminary Approval Order;
- f. stay all proceedings in the Litigation other than proceedings necessary for the presentation of the Settlement Agreement at the Fairness Hearing;

- g. approve the appointment of Rust Consulting, Inc. as Settlement Administrator to assist the Parties in the administration of the Settlement;
- h. establish dates for (i) filing the Fee and Expense Application, (ii) filing objections to the Settlement Agreement, the certification of the Class, or Class Counsel's Fee and Expense Application, (iii) filing responses to any such objections, and (iv) the Fairness Hearing; and
- i. preliminarily enjoin Plaintiff and the Class from commencing or prosecuting, except through the Litigation, any of the Released Claims, in further aid of the Court's jurisdiction to implement and enforce the Settlement.

2.3 Class Notice. Within 30 days after the Court enters the Preliminary Approval Order, Defendants shall provide the Class with Notice. Defendants will request that the Settlement Administrator send the Notice to all Class Members for whom Defendants have an address, by first class mail, postage prepaid. The Settlement Administrator shall make reasonable efforts to locate and mail a second Notice to those Class Members whose original Notice is returned as undeliverable. The Notice will notify the Class, *inter alia*, of (a) the proposed Settlement, (b) the maximum amount of fees and expenses sought under Class Counsel's Fee and Expense Application and the Plaintiff's proposed incentive payment, (c) the right of Class Members to object to the Settlement Agreement, the Fee and Expense Application or the incentive payment, and (d) the date and time for the Fairness Hearing.

2.3.1 Notice and Settlement Administration Costs. The Plan shall pay all reasonable fees, costs, and other charges of the Settlement Administrator, and any and all other reasonable costs of notice and settlement administration.

2.4 Fee and Expense Application. Class Counsel shall file, no later than 14 days after entry of the Preliminary Approval Order, a Fee and Expense Application, subject to the provisions of Section 6.1 of this Settlement Agreement. The Fee and Expense Application, or a separate motion filed by Plaintiff at the same time as the Fee and Expense Application, shall include a request for an incentive payment to Plaintiff, subject to Section 6.2 of this Settlement Agreement.

2.5 Objections to the Settlement. Any Class Member may object to the certification of the proposed Class, the Settlement Agreement, Class Counsel's Fee and Expense Application or to the proposed incentive payment, by filing an objection no later than 45 days before the scheduled date of the Fairness Hearing. To be considered, an objection must include:

- a. the objector's full name and address and an appearance on behalf of any counsel representing the objector;
- b. a written statement of all grounds for the objection, including any evidence supporting the objection;
- c. any supporting memorandum or brief;
- d. a list of any persons who will be called to testify in support of the objection; and
- e. a statement whether the objector intends to appear at the Fairness Hearing, and, if such appearance will be through counsel, the identity of such counsel.

If the objection is not electronically filed through the Court's electronic filing system, the objection must be served upon the following counsel of record by U.S. Mail, postage prepaid and postmarked by the filing deadline:

Anne E. Rea
Sidley Austin LLP
One South Dearborn St.
Chicago, IL 60603

Thomas G. Moukawsher
Moukawsher & Walsh LLC
328 Mitchell Street
Groton, CT 06340

Any Class Member who does not file a timely objection complying with the above requirements shall waive his or her right to appear and be heard at the Fairness Hearing and any right to object to the certification of a settlement Class, the approval of the Settlement Agreement, Class Counsel's Fee and Expense Application or to any incentive payment, either before the Court or on appeal.

2.6 Responses to Objections. The Parties may file written responses to any objections and briefs in support of the Settlement on or before the date 14 days prior to the Fairness Hearing.

2.7 Fairness Hearing. The Fairness Hearing shall be on a date set by the Court. At the Fairness Hearing, the Parties will request a Final Order and Judgment in the Form of Exhibit C hereto that, *inter alia*:

- a. confirms certification of the Class for settlement purposes and finds that the requirements of Rule 23(b)(1)(A) and 23(b)(2) of the Federal Rules of Civil Procedure have been met;
- b. finds that the dissemination of the Notice in the form and manner ordered by the Court was accomplished as directed, satisfied the requirements of Rule 23 and due process, was the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto;
- c. finally approves the Settlement as fair, reasonable, and adequate and directs consummation of the Settlement according to its terms;

d. releases the Released Parties from any and all liability with respect to the Released Claims;

e. dismisses the Litigation with prejudice;

f. approves the Plan's payment of the administrative expenses that the Plan incurred in connection with the Settlement, including the costs and expenses of the Settlement Administrator, Class Notice, attorneys' fees and costs (to the extent that the attorneys' fees and costs do not exceed the amount specified in Section 6.1 of the Settlement Agreement), and any incentive payment (to the extent the incentive payment does not exceed the amount specified in Section 6.2 of the Settlement Agreement);

g. permanently enjoins all Class Members from instituting any action against the Released Parties regarding or related to any of the Released Claims; and

h. provides the Court with continuing jurisdiction to enforce the Final Order and Judgment.

2.8 Internal Revenue Service Approval. Defendants shall seek approval from the IRS of the Settlement Plan Amendment, which will implement the terms of this Settlement Agreement. IRS approval of the Settlement Plan Amendment is a condition that must be met in order for the Settlement to become effective. Should the Effective Date not occur because the Plan is unable to secure a favorable determination letter approving the Settlement Plan Amendment from the IRS, then the Settlement Agreement shall be null and void, the Preliminary Approval Order shall be vacated, and the Litigation shall resume without prejudice to the Parties, provided, however, that the Parties will negotiate in good faith regarding any modifications to the Settlement Agreement that may be necessary to obtain IRS approval of the Settlement Plan Amendment. In the event that IRS approval of the Settlement Plan Amendment is not received

within six months of the date the Court enters Final Approval of the Settlement, Defendants shall provide Class Counsel and the Mediator with a reasonable written explanation of the status of its efforts to secure IRS approval of the Settlement Plan Amendment and the parties shall meet and confer through the Mediator.

3. SETTLEMENT AMOUNTS

3.1 Settlement Calculations. The aggregate value of the Settlement Amounts and the incentive payment to Plaintiff is \$17,000,000. At the time of the allocation of the Settlement Amounts, after the incentive payment is allocated to the Named Plaintiff, the remainder of the \$17,000,000 will be allocated to Class Members as set forth in the Plan of Allocation, which is attached hereto as Exhibit A. In order to facilitate the administration of the Settlement, approximately 3.85% of the aggregate value of the Settlement Amounts will be reserved to address any changes to the Class membership and allocations. If any portion of the Reserve remains at the time of the Fairness Hearing, the remaining Reserve will be allocated to Class Members on a *pro rata* basis, as set forth in Exhibit A. The allocation among the Class Members that is set forth in the Plan of Allocation has been determined jointly by agreement of the Parties and is in compliance with ERISA.

3.2 Interest. If the Settlement Conditions set forth in Section 1.11 are met, the amount of Interest for each Class Member shall be calculated as of the date the Settlement Amount is credited to each Class Member's Cash Balance Account and shall be added to the Settlement Amount and credited to each Class Member's Cash Balance Account. Interest on the Settlement Amount shall accrue at the Plan rate beginning 90 days after the Court grants Preliminary Approval of the Settlement. Notwithstanding the preceding, Interest shall not accrue

during any period of time that passes in connection with an appeal or writ seeking review of any court rulings related to the Settlement.

4. IMPLEMENTATION OF SETTLEMENT

4.1 Credits to Existing Cash Balance Accounts. Bank of America, as Settlor, shall amend the Plan and, pursuant to the terms of the Plan Amendment, the Plan shall credit each Cash Balance Account of each Class Member who currently has such an account with the Class Member's Settlement Amount in accordance with Section 4.5 of this Settlement Agreement.

4.2 Creation of New Cash Balance Accounts. As necessary, Bank of America, as Settlor, shall amend the Plan to create a New Cash Balance Account for Class Members who do not currently have a Cash Balance Account. The Settlement Amount shall be credited to the New Cash Balance Accounts in accordance with Section 4.5 of this Settlement Agreement, and those accounts shall thereafter be administered in accordance with the terms of the Plan, as amended.

4.3 Payment to Beneficiary. Should any Beneficiary be lawfully entitled to all or part of an allocation of the Settlement Amount, allocation to such Beneficiary shall be made as provided in the Plan.

4.4 Timing of Settlement Amount Allocation. No Settlement Amount shall be allocated before the Effective Date. Defendants shall use reasonable best efforts to allocate all Settlement Amounts within 60 days of the Effective Date.

4.5 Benefits Subject to Plan. The Settlement Amount shall be subject to all terms and conditions of the Plan and the Settlement Plan Amendment including, but not limited to, Article 6 of the Plan, governing Payment and Optional Forms of Benefit and Article 9, governing Administration of the Plan. Settlement Amounts for Class Members who cannot be located shall

be governed by Section 17.5 of the Plan and shall remain available for allocation as provided therein. In the event of any inconsistency between the provisions of the Plan and this Settlement Agreement, the terms of the Plan, as amended by the Settlement Plan Amendment, shall govern.

5. DISMISSAL AND RELEASE

5.1 Dismissal. By operation of the Final Order and Judgment, this Litigation shall be dismissed with prejudice in its entirety.

5.2 Release. By operation of the Final Order and Judgment, the Plaintiff and all Class Members shall release the Released Parties from any and all claims, debts, demands, rights or causes of action or liabilities (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, amounts, or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, or individual in nature, including both known claims and unknown claims that:

(i) have been asserted in the Litigation by Class Members or any of them against any of the Released Parties;

(ii) could have been asserted in any forum by Class Members or any of them against any of the Released Parties, which arise out of or are related to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Second Amended Complaint;

(iii) arise out of or are related to the cash balance conversion of the Retirement Plan of the First National Bank of Boston and Certain Affiliated Companies on January 1, 1989, as well as

the conversion of subsequent plans merged therein between January 1, 1989 and December 31, 1996; and

(iv) arise out of or are related to the 1997 Restatement.

5.2.1 Claims Not Released. The Release described herein does not include any claim under the terms of any benefit plan sponsored by the Defendants where such claim either (a) is not related to (1) this Settlement Agreement or (2) the matters released in Section 5.2 of this Agreement, or (b) is a claim by an individual for benefits due to a calculation or other administrative error under the terms of the relevant plan as written and otherwise not related to this Settlement.

5.2.2 Waiver of California Civil Code Section 1542 and Comparable Law. The Released Claims expressly include any and all claims that any Class Member may now have, or in the future may have, under any law relating to the release of unknown claims, including without limitation Section 1542 of the California Civil Code, which provides:

A general release does not extend to the 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 or her settlement with the debtor.

The Released Claims expressly include a waiver of the rights under Section 1542 and any comparable law.

5.3 No Other Liability. The Settlement Agreement shall be in full settlement, compromise, release, and discharge of the Released Claims, and the Released Parties shall have no further liability or obligation to any Class Member with respect to the Released Claims, except as expressly provided herein.

5.4 Covenant Not to Sue. By operation of entry of the Final Order and Judgment, upon and after the Effective Date, neither Plaintiff nor any Class Member, acting individually or

in combination with others, shall institute, maintain, prosecute, sue, or assert in any action or proceeding (including an IRS proceeding) any Released Claim.

6. ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE PAYMENT

6.1 Attorneys' Fees and Expenses. The Plan shall pay Class Counsel's fees and expenses, in an amount determined by the Court to be fair and reasonable, as an administrative expense of the Plan. In no event will the Plan pay fees and expenses in excess of \$4,000,000. Defendants agree not to file any objection to Class Counsel's Fee and Expense Application, provided it complies with the provisions of this Settlement Agreement and does not exceed \$4,000,000. Class Counsel agrees to waive any amount awarded by the Court that exceeds \$4,000,000 in fees and expenses and not to seek or accept payment from Defendants, the Plan, or the Class of any amount in excess of \$4,000,000 in fees and expenses. Subject to Court approval, the Plan shall pay the fee and expense award within 30 days of the later of (a) the Effective Date or (b) the date the order awarding fees and expenses and determining that they are a reasonable administrative expense of the Plan is a final judgment no longer subject to appeal or, if appealed, has been affirmed and is no longer subject to further appeal. No award of attorneys' fees and expenses will be paid to the extent such award exceeds the amount specified in this Section. In addition, Class Counsel shall bear all of his own expenses, including any actuarial expenses incurred or to be incurred, in connection with this Settlement Agreement and its plan of allocation, to the extent such expenses are not included as part of any fee and expense award approved by the Court.

6.2 Incentive Payment. Subject to Court approval, the Plan shall pay, within 30 days of the later of (a) the Effective Date or (b) the date any incentive payment is part of a final judgment no longer subject to appeal or, if appealed, has been affirmed and is no longer subject to

further appeal, an incentive payment to Plaintiff. Defendants agree not to object to the incentive payment, provided it complies with the provisions of this Settlement Agreement and does not exceed \$10,000. The amount of the incentive payment will be paid from the amounts allocated to benefit the Class. No incentive payment will be paid to the extent such payment exceeds the amount specified in this Section.

6.3 Severability of Provisions Relating to Attorneys' Fees and Expenses and Incentive Payment. The Parties agree that the provisions of Sections 6.1 and 6.2 of this Agreement are severable from the remainder of this Agreement. Any judgment or order on the Fee and Expense Application or the incentive payment shall be separate and apart from the Final Approval of the Settlement, and an appeal solely of any award of attorneys' fees and expenses or any incentive payment shall not delay the Effective Date for the Settlement Agreement, which shall be fully implemented as soon as permissible under the terms of this Agreement. In the event of an appeal solely related to the Fee and Expense Application or the incentive payment, the obligation of Defendants to pay the awarded fees and expenses or incentive payment shall be automatically stayed until the later of the Effective Date or the date that a final judgment, no longer subject to appeal, has been entered awarding Class Counsel's attorneys' fees and expenses.

6.4 Persons Objecting to the Settlement. Defendants are not responsible to those Class Members who submit objections to the Settlement for attorneys' fees or expenses of any kind. Nothing herein shall affect amounts otherwise payable pursuant to Section 6.1.

7. MISCELLANEOUS

7.1 No Admissions. This Settlement Agreement is entered into by Defendants solely to resolve disputed claims, and Defendants have denied, and continue to deny, any liability to

Plaintiff or the Class. Nothing herein shall be construed as an admission against Defendants in this proceeding or in any other proceeding.

7.2 Failure to Reach Effective Date. Should the Effective Date not occur because the Court, or any court on appeal, determines that this Settlement Agreement should not be approved and the Parties are unable to obtain a reversal of such judgment, or because the Plan is unable to secure an IRS determination letter approving the Settlement Plan Amendment, then this Settlement Agreement shall be null and void, the Preliminary Approval Order shall be vacated, and the Litigation shall resume without prejudice to the rights of the Parties. Upon failure to reach the Effective Date, nothing herein, or in any filings made in support of the approval of the Settlement, shall be deemed an admission by any Party or introduced into evidence in this Litigation or otherwise.

7.3 Responses to Inquiries by Class Members After the Agreement is Filed with the Court. After the Settlement Agreement is filed with the Court, the Parties may respond to inquiries by Class Members regarding the Settlement. The responses provided to such questions will not create any liability or obligations that are not already specified in this Settlement Agreement. The Plan shall retain Rust Consulting, Inc. as Settlement Administrator. The Settlement Administrator shall establish a call center and a website where it will post, *inter alia*, frequently asked questions, and respond to Class Member inquiries.

7.4 Tax Qualification of Payments. The Parties recognize that the amounts contemplated under this Settlement Agreement – including amounts to be credited to Class Members, attorneys' fees and expenses paid to Class Counsel and the incentive payment to Plaintiff – will be paid from a tax-qualified defined benefit pension plan, and that the sponsor and fiduciaries of the Plan will take measures, as appropriate, to ensure that the actions contemplated

under this Settlement Agreement satisfy the tax-qualification requirements of the Code. This Settlement Agreement is not intended to require any Party to perform an unlawful act or an act that would violate the tax-qualification requirements of the Code, but to the extent that the Settlement Agreement unambiguously purports to require any such act, the Parties agree to amend the Settlement Agreement to bring it into conformity with the law and the tax-qualification requirements of the Code, as necessary, in the manner that best effectuates, to the extent possible under applicable law, the intent of the Settlement Agreement as expressed in its written terms.

7.5 Tax Consequences of Payments. Defendants make no representations or warranties regarding the income tax or other consequences to any Class Member of the payment of the Settlement Amount.

7.6 Availability of Data. The Parties have jointly used data reasonably available to identify Class Members and to calculate the Settlement Amounts. All determinations as to class membership and the Settlement Amount to which each Class Member is entitled, which will be recited in schedules attached to and incorporated in the Final Order and Judgment, shall be final and conclusive at the time the Court grants Final Approval and shall not be subject to challenge after that date.

7.7 Duty to Cooperate. The Parties promise to cooperate in good faith and to take all actions reasonably necessary to effectuate this Settlement Agreement. The Parties further agree that if before the Effective Date any issues regarding interpretation or implementation of this Settlement Agreement arise between the Parties – as opposed to between Defendants and individual Participants or claimed Participants – and such issues cannot be resolved by the Parties, that such issues shall be mediated before the Mediator and such issues shall be brought before the Court only if such mediation cannot resolve the issues.

7.8 Extensions of Time. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Agreement so long any such extension is consistent with established court deadlines.

7.9 Deadlines Falling on Weekends or Holidays. If any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

7.10 Successors. The Agreement shall be binding upon, and inure to the benefit of, the respective successors, heirs, executors, administrators and assigns of the Parties and the Class Members.

7.11 Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way affect any other provision if Defendants and Class Counsel, on behalf of the Plaintiff and other Class Members, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement; provided, however, Sections 2.1.1 and 7.1 shall remain binding and in full force and effect regardless of the invalidity, illegality, or unenforceability of any other provision without the need for the Parties to execute a further writing as set forth in this Section.

7.12 Waivers. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

7.13 Entire Agreement. This is the entire agreement between the Parties and it supersedes any prior agreements, written or oral, including the Agreement in Principle to Settle

executed in August 2010. This Settlement Agreement cannot be altered, modified or amended except through a writing executed by all Parties.

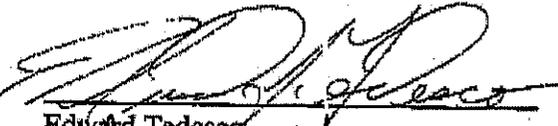
7.14 Construction of Agreement. This Settlement Agreement shall be construed to effectuate the intent of the Parties to resolve all pending disputes. All Parties have participated in the drafting of this Settlement Agreement and any ambiguity should not be resolved by virtue of a presumption in favor of any Party. The Settlement Agreement was reached at arms-length by Parties represented by counsel.

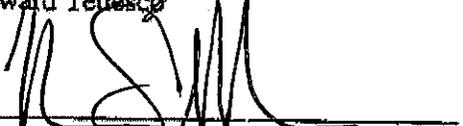
7.15 Executed in Counterparts. This Settlement Agreement may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

Agreed to on behalf of Plaintiff and the Class

Dated: January 6, 2011

By:


Edward Tedesco


Thomas G. Monkawsher

Agreed to on behalf of Defendants

Dated: January __, 2011

Bank of America Corporation

By:

Mark S. Behnke
Global Compensation, Benefits
and Shared Services Executive
Bank of America Corporation

executed in August 2010. This Settlement Agreement cannot be altered, modified or amended except through a writing executed by all Parties.

7.14 Construction of Agreement. This Settlement Agreement shall be construed to effectuate the intent of the Parties to resolve all pending disputes. All Parties have participated in the drafting of this Settlement Agreement and any ambiguity should not be resolved by virtue of a presumption in favor of any Party. The Settlement Agreement was reached at arms-length by Parties represented by counsel.

7.15 Executed in Counterparts. This Settlement Agreement may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

Agreed to on behalf of Plaintiff and the Class

Dated: December __, 2010

By: _____
Edward Tedesco

Thomas G. Moukawsher

Agreed to on behalf of Defendants

Dated: January 4, 2011

Bank of America Corporation

By: Mark S. Behnke
Mark S. Behnke
Global Compensation, Benefits
and Shared Services Executive
Bank of America Corporation

Dated: January 7, 2011

Bank of America Pension Plan for Legacy Fleet
(now a component of the Bank of America Pension
Plan for Legacy Companies)

By: 
Mark S. Behnke
Its Authorized Representative
Global Compensation, Benefits
and Shared Services Executive
Bank of America Corporation

EXHIBIT A

to Settlement Agreement

PLAN OF ALLOCATION

1. As set forth in Section 3.1 of the Settlement Agreement, the aggregate value of the Settlement Amounts and the incentive payment to Plaintiff is \$17,000,000. At the time of the allocation of the Settlement Amounts, after the incentive payment is allocated to the Plaintiff, the remainder of the \$17,000,000 will be allocated to Class Members.

2. The proposed incentive payment to Plaintiff is \$10,000. Accordingly, the value of the Settlement Amounts that will be allocated to Class Members is \$16,990,000.¹

3. The Settlement Amounts will be allocated to Class Members based on two factors: (1) whether a Class Member had a Prior Annuity Benefit that was converted to a cash balance benefit in connection with the 1997 Cash Balance Restatement, and (2) a Class Member's years of service as of January 1, 2010.

4. Class Members have been grouped into six different Service Groups based on their years of service as of January 1, 2010. Those in Service Groups with more years of service will receive a larger Settlement Amount. Within each Service Group, Class Members with a Prior Annuity Benefit will receive a larger Settlement Amount than Class Members who did not have a Prior Annuity Benefit.

5. In order to facilitate the administration of the Settlement, approximately 3.85% of the aggregate value of the Settlement Amounts (a total of \$653,200) will be reserved to address any changes to the Class membership and allocations. If any portion of the Reserve remains at the

¹ In the event that the Court does not approve the \$10,000 incentive payment to Plaintiff, or approves an incentive payment to Plaintiff that is less than \$10,000, any portion of the \$10,000 that is not to be paid to Plaintiff as an incentive payment will be allocated to the Class Members on a *pro rata* basis.

time of the Fairness Hearing, the remaining Reserve will be allocated to Class Members on a *pro rata* basis.

6. As of the date of the Settlement Agreement, the Settlement Amounts to be allocated to Class Members are set forth in the chart below.

SERVICE GROUP	YEARS OF SERVICE	SETTLEMENT AMOUNT FOR CLASS MEMBERS WHO HAD A PRIOR ANNUITY BENEFIT	SETTLEMENT AMOUNT FOR CLASS MEMBERS WITHOUT A PRIOR ANNUITY BENEFIT
1	Less than 10	\$400.00	\$200.00
2	10 – 14.99	\$800.00	\$400.00
3	15 – 19.99	\$2,400.00	\$1,200.00
4	20 -- 29.99	\$6,000.00	\$3,000.00
5	30 – 39.99	\$11,200.00	\$5,600.00
6	40 and above	\$12,800.00	\$6,400.00

The chart reflects the Settlement Amount to which each Class Member is entitled. The chart does not reflect the value of any Reserve that may be allocated to Class Members pursuant to Section 3.1 of the Settlement Agreement and Paragraph 5 above. Additionally, this chart does not reflect the value of any Interest that may be added to the Settlement Amounts pursuant to Section 3.2 of the Settlement Agreement.

7. After all of the conditions set forth in Section 1.11 of the Settlement Agreement have been met, the final Settlement Amounts that will be allocated to each Class Member, in accordance with Section 4 of the Settlement Agreement, will be the Settlement Amounts set forth in the chart in Paragraph 6 above, plus the remaining Reserve, if any, as set forth in Section

3.1. of the Settlement Agreement and Paragraph 5 above, plus any Interest, as set forth in Section 3.2 of the Settlement Agreement.

EXHIBIT B

to Settlement Agreement

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

)	
EDWARD TEDESCO, individually and on)	
behalf of others similarly situated,)	
)	
Plaintiffs,)	
)	No. 3:07 CV 1640 (JCH)
vs.)	
)	
BANK OF AMERICA CORPORATION, et al.,)	
)	
Defendants.)	
)	
)	

PRELIMINARY APPROVAL ORDER

This matter, having come to the Court for hearing on the motion of Plaintiff and Defendants for Preliminary Approval of the Class Action Settlement Agreement (“Settlement Agreement”) executed on December ____, 2010 by Plaintiff, on behalf of himself and the Class, and Defendants, and for related relief, including to establish a schedule with respect to a hearing to determine, by way of final judgment, whether the Settlement is fair, reasonable and adequate, the Court having considered the motion and supporting materials, hereby finds and orders as follows:

1. The terms that are capitalized in the Order shall have the meaning ascribed to those terms in the Settlement Agreement.

2. The Court provisionally certifies a Class, for the purposes of settlement only, comprised of all persons who satisfy the following requirements:

(a) the person earned a vested benefit;

- (b) the person participated in either (1) the BankBoston Cash Balance Retirement Plan on December 31, 1996 and January 1, 1997 or (2) the BayBanks Pension Plan on December 31, 1996 and the Bank Boston Cash Balance Retirement Plan on January 1, 1997; and
- (c) the person was employed by FleetBoston Financial Corporation on or after January 1, 2001, the date on which BankBoston Cash Balance Retirement Plan participants became FleetBoston Financial Pension Plan participants and were assigned FleetBoston Financial Pension Plan hypothetical cash balance accounts.

In addition, the Class includes any person who is the Beneficiary of a person satisfying the above criteria and, as Beneficiary, has a current legal entitlement to receive some or all of the person's benefits. This Class is provisionally certified, for settlement purposes only, for all claims that were or could have been brought in this Litigation.

3. The Court provisionally appoints, for settlement purposes only, Edward Tedesco as the Class representative.

4. The Court provisionally appoints, for settlement purposes only, Thomas G. Moukawsher of Moukawsher & Walsh LLC as counsel for the Class.

5. The Settlement was negotiated at arm's length and is sufficiently fair, reasonable and adequate and it is in the best interests of the Plaintiff and the Class for this Court to grant Preliminary Approval and to order the distribution of Notice to the Class. A hearing will determine whether to give Final Approval to the Settlement (the "Fairness Hearing") is

scheduled on _____ at _____ a.m./p.m. At the Fairness Hearing, the Court will consider:

- (a) whether to approve the Settlement as fair, reasonable and adequate, and whether to enter the Final Order and Judgment;
- (b) an award of attorneys' fees, considering, *inter alia*, the Fee and Expense Application of Class Counsel to be filed on _____;
- (c) an incentive payment to Plaintiff;
- (d) any timely and proper objections to the Settlement and to the Fee and Expense Application or request for incentive payment; and
- (e) any other matters the Court may deem appropriate.

The Court reserves the right to continue or adjourn the Fairness Hearing without further notice other than an announcement (which may be made by docket entry) at or in advance of the Fairness Hearing and, specifically, without further notice to the Class. The Court further reserves the right to approve the Settlement with modifications, as may be agreed upon by the Parties, and without further notice to the Class.

6. Notice in the form of Exhibit 1 to this Preliminary Approval Order is approved for distribution. The Notice and manner of giving notice, as set forth below, comply with the requirements of Rule 23(c) of the Federal Rules of Civil procedure and due process and are the best notice practicable under the circumstances.

7. By no later than 30 days after entry of this Order, Defendants shall cause the Notice, in the form of Exhibit 1 to the Preliminary Approval Order, with blanks completed and such non-substantive modifications thereto as may be agreed upon by the Parties, to be mailed to the last known address of each member of the Class by first class mail. Defendants shall engage in reasonable efforts to locate any Class Member whose Notice is returned as undeliverable and to make a second mailing to such Class Member.

8. Defendants shall file, at least 14 days prior to the Fairness Hearing, an affidavit establishing compliance with the provisions of paragraph 7.

9. Class Counsel shall file, on _____, a Fee and Expense Application. Plaintiff shall file, on _____, a request for an incentive payment.

10. Any Class Member may, subject to the following conditions, object to the Settlement, to the Fee and Expense Application, or to the request for an incentive payment to Plaintiff, and may appear at the Fairness Hearing in person or through counsel, and present his or her objections. To have any objections considered, the Class Member must, no later than _____, file with the Clerk of the Court, and serve on the Parties the following:

- (a) the objector's full name and address, along with an appearance of counsel if the objector is so represented;
- (b) a written statement of all grounds for the objection, including any evidence supporting the objection;
- (c) any supporting memorandum;

- (d) a list of all persons to be called to testify, including experts; and
- (e) a statement whether the objector intends to appear at the Fairness Hearing and, if such appearance will be through counsel, the identity of all counsel.

Any Class Member who does not satisfy these requirements shall waive his or her right to appear at the Fairness Hearing and shall waive any right to object to the approval of the Settlement, either before the Court or on appeal.

11. The parties may file written responses to any objection and any memorandum supporting approval of the Settlement on or before 14 days prior to the Fairness Hearing.

12. Pending the final determination of the fairness, reasonableness and adequacy of the proposed Settlement, all Participants are enjoined from instituting or commencing any action against Defendants based on the Released Claims and all proceedings in this action, except those related to approval of the Settlement, are stayed.

13. This Court approves the appointment of Rust Consulting, Inc. as Settlement Administrator to assist Plaintiff and Defendants in the administration of the Settlement, including but not limited to the distribution of Notice.

14. All Parties and the Settlement Administrator may respond to inquiries from the Class regarding the Settlement, except that counsel for Defendants may not communicate directly with the Class regarding the Settlement without the prior approval of Class Counsel.

15. Should the Settlement not be finally approved, or should the Effective Date not occur, this Preliminary Approval Order, including the provision certifying the Class for

settlement purposes only, shall be null and void and of no further force and effect, and the Parties shall be restored to their respective positions prior to the execution of the Settlement Agreement. Upon such nullification, neither this Preliminary Approval Order nor the Settlement Agreement shall be used or referred to for any purpose in this Litigation or any other proceeding, and the Settlement Agreement and all negotiations related thereto shall be inadmissible. The Settlement Agreement and this Preliminary Approval Order are not an admission of liability by Defendants.

Date: _____

Janet C. Hall
United States District Judge

EXHIBIT 1

to Preliminary Approval Order

THE CLASS

1. Am I a member of the proposed Class?

The Court has provisionally certified a Class for the purpose of this Settlement only. The Class includes any and all persons with a vested benefit who are former or current participants assigned hypothetical cash balance accounts under the FleetBoston Financial Pension Plan who were also participants in (a) the BankBoston Cash Balance Retirement Plan on December 31, 1996 and January 1, 1997 or (b) the BayBanks Pension Plan on December 31, 1996 and the BankBoston Cash Balance Retirement Plan on January 1, 1997. You are a member of the Class if you earned a vested benefit and meet the following requirements: (1) you were a participant in (a) the BankBoston Cash Balance Retirement Plan on December 31, 1996 and January 1, 1997 or (b) the BayBanks Pension Plan on December 31, 1996 and the BankBoston Cash Balance Retirement Plan on January 1, 1997, and (2) you were employed by FleetBoston Financial Corporation on or after January 1, 2001, the date on which BankBoston Cash Balance Retirement Plan participants became FleetBoston Financial Pension Plan participants and were assigned FleetBoston Financial Pension Plan hypothetical cash balance accounts. If you have any questions as to whether you meet these requirements, you can call (xxx) xxx-xxxx for more information.

2. What is a class action?

A class action is a legal proceeding in which one or more people act as the representatives of a group of people. Here, Edward Tedesco is representing himself and all of the members of the Class. The Court resolves the claims of all Class members in one proceeding.

THE LAWSUIT AND THE PROPOSED SETTLEMENT

3. What is the lawsuit about?

Effective January 1, 1997, the BankBoston Cash Balance Retirement Plan was restated. The Plaintiff, suing on behalf of all Participants who were participants in the Bank Boston Cash Balance Retirement Plan on December 31, 1996 and January 1, 1997, claimed that the notice provided in connection with the restatement was inadequate under the Employee Retirement Income Security Act of 1974 (“ERISA”), that the cash balance formula violated provisions of ERISA prohibiting age discrimination, that Summary Plan Descriptions were inadequate, that the relative values of pension benefits paid as lump sums rather than as annuities were not adequately explained, and that the Plan and its fiduciaries violated ERISA in connection with the calculation and payment of benefits. The Defendants have denied all of these claims.

4. Why is there a proposed Settlement?

The Settlement is proposed by the Parties. The Court has not decided in favor of either side. The Plaintiff and Class Counsel, who have each been provisionally appointed by the Court to represent the Class, believe the claims have merit. However, they recognize that there is risk that they may not prevail on some or all of the claims and that any final judgment may not occur for years. The proposed Settlement provides certain and immediate benefits to the Class. Defendants believe their positions to be meritorious and deny any liability to the Class. They favor the Settlement, however, because it puts the matter to rest for the Defendants and for Participants in the Plan.

THE SETTLEMENT BENEFITS – WHAT YOU GET**5. What will I get if the Settlement is approved?**

If the Court certifies the Class and approves the Settlement, and if the Internal Revenue Service (“IRS”) approves the Plan Amendment implementing the Settlement, the total value of the Settlement Amounts will be \$17,000,000, less the proposed \$10,000 incentive payment to the Plaintiff. Each Class Member will be entitled to a Settlement Amount as set forth in the chart below:

SERVICE GROUP	YEARS OF SERVICE	SETTLEMENT AMOUNT FOR CLASS MEMBERS WHO HAD A PRIOR ANNUITY BENEFIT	SETTLEMENT AMOUNT FOR CLASS MEMBERS WITHOUT A PRIOR ANNUITY BENEFIT
1	Less than 10	\$400.00	\$200.00
2	10 – 14.99	\$800.00	\$400.00
3	15 – 19.99	\$2,400.00	\$1,200.00
4	20 -- 29.99	\$6,000.00	\$3,000.00
5	30 – 39.99	\$11,200.00	\$5,600.00
6	40 and above	\$12,800.00	\$6,400.00

The Settlement Amounts have been determined by considering two factors that the Parties agree play important roles in determining the extent of any Class Member’s potential relief as alleged in the Complaint: (1) whether a Class member had a Prior Annuity Benefit that was converted to a cash balance benefit in connection with the 1997 Restatement, and (2) a Class Member’s years of service.

As depicted in the chart, Class Members have been grouped into six different Service Groups based on their years of service. Those in Service Groups with more years of service will receive a larger Settlement Amount. Within each Service Group, Class Members with a Prior Annuity Benefit will receive a larger Settlement Amount than Class Members who did not have a Prior Annuity Benefit.²

² To facilitate the administration of the Settlement, approximately 4% of the total value of the Settlement Amounts is currently being reserved to address any changes that may be made to the Class membership and allocations. If any portion of the reserve remains at the time of the Fairness Hearing, the remaining reserve will be allocated to Class Members on a *pro rata* basis.

6. How Can I Learn My Settlement Amount?

The Settlement Amounts for Class Members are set forth above. Please call (xxx) xxx-xxxx to confirm your Settlement Amount. After this Settlement is approved by the Court, you will not be able to challenge your Settlement Amount. This Notice contains a unique identification number for you, which is the five digits on page 1 of the Notice appearing directly above your name and address. You will need to provide this identification number if you call about your Settlement Amount. You also may contact Class Counsel, whose address and telephone number are in paragraph 15, for more information.

7. When will I get my Settlement Amount?

The Settlement Amounts will be allocated only if the Class is certified and the Settlement is approved by the Court and that approval is not appealed, or if it is appealed, after it has been affirmed. In addition, the Settlement is conditioned on IRS approval of an amendment to the Plan implementing the Settlement. No Settlement Amounts can be allocated until the Court and the IRS have given their approval. Updates on the progress toward completion will be published at www.xxxxxxxxxxxxx.com.

8. How will I get my Settlement Amount?

The method of allocation depends upon whether you have a current Cash Balance Account. Participants who have a current Cash Balance Account on the date of allocation of the Settlement Amounts will receive their Settlement Amount through a credit to their Cash Balance Account. If, at that date, you do not have a current Cash Balance Account, a New Cash Balance Account will be created for you. It will be governed by the same Plan terms as other accounts, including rollover provisions and distribution of small amounts.

9. Will I need to do anything to get my Settlement Amount?

If you received this Notice in the mail at your current address, then the parties have all the information necessary to implement this Settlement for you and you will receive your Settlement Amount if the Settlement is approved. You can go to www.xxxxxxxxxxxxx.com or call (xxx) xxx-xxxx to get updates on the progress of the Settlement. If you have a Cash Balance Account, the credit to your account for the Settlement Amount will be reflected on your statement. If you previously received pension benefits, the settlement amount will be credited to a New Cash Balance Account created for you. If one of these events does not occur within 60 days of the time that the Parties announce the Settlement to be effective, as shown on the website, or if you believe you are a member of the Class and you did not receive this Notice in the mail but got it from some other source, you should contact the Settlement Administrator at (xxx) xxx-xxxx.

OBJECTING TO THE SETTLEMENT

10. How do I raise any objection I have to the Settlement?

The Court will hold a Fairness Hearing on _____, 2011 at _____ a.m. to determine whether to approve the Settlement. The Court needs to determine whether the Settlement is fair, reasonable and adequate to the Class. You have a right to object if you do not believe this to be the case. To do so you must, by yourself or through counsel, file with the Court and serve on the lawyers for Defendants and the Class, at the addresses shown in paragraph 15, below, on or before _____ the following information: (a) your full name and address and the name and address of any counsel representing you, (b) a written statement of all grounds for the objection, including any evidence supporting it, (c) any

supporting memorandum or brief, (d) a list of any persons who will testify at the Fairness Hearing, and (e) a statement whether you intend to appear, personally or through counsel, at the Fairness Hearing. If you do not file and serve your objection on or before _____, you will waive your right to object at the Fairness Hearing or on appeal.

You do not have to attend the Fairness Hearing. You only need attend if you wish to be heard and you have satisfied the above requirements.

THE PETITION FOR ATTORNEYS' FEES AND COSTS

11. Who is representing the Class?

The Court has provisionally appointed Thomas G. Moukawsher of Moukawsher & Walsh LLC to represent the Class.

12. How will the lawyer for the Class be paid?

Under the proposed Settlement, the attorneys' fees and expenses of the counsel for the Class will be paid by the Plan as an administrative expense. The fees and expenses will be an amount to be set by the Court but not to exceed \$4,000,000. The payment of fees and expenses will not decrease the amount available for the Class. After it is filed, Class Counsel's Fee and Expense Application will be available at www.xxxxxxxxxxxx.com.

In addition, because Plaintiff represented the Class throughout the litigation, the Plan will pay, as an administrative expense, an incentive payment to Plaintiff, in an amount to be set by the Court not to exceed \$10,000. Plaintiff will also receive a Settlement Amount. The incentive payment will be paid from the total amount available to the Class.

13. Can I object to the request for attorneys' fees and expenses?

Yes, you can object to the request for attorneys' fees and expenses or the incentive payment in the same manner as you would use to object to the Settlement.

THE SETTLEMENT WILL INCLUDE A RELEASE

14. Will I release any claims against the Defendants?

If the Settlement is approved, by virtue of the Final Order and Judgment all Class members will release Defendants and all companies and persons related to them from all of the claims in the lawsuit and claims that could have been asserted in the lawsuit, and any other claims that arise out of or are related to: 1) the cash balance conversion of the Retirement Plan of the First National Bank of Boston and Certain Affiliated Companies on January 1, 1989; 2) the conversion of subsequent plans merged therein between January 1, 1989 and December 31, 1996; and 3) the 1997 Restatement. The lawsuit will also be dismissed with prejudice.

ADDITIONAL INFORMATION

15. How can I get additional information about the lawsuit or the Settlement?

You can get a full copy of the Settlement Agreement, along with answers to additional frequently asked questions at www.xxxxxxxxxxxx.com. You can also call (xxx) xxx-xxxx for more information. In addition, you can call or write to Class Counsel at:

Thomas G. Moukawsher
Moukawsher & Walsh LLC
328 Mitchell Street
Groton, CT 06340
(860) 405-7240
tmoukawsher@mwlawgroup.com

Do not contact counsel for Defendants, except to serve on them any objections. Do not contact the Clerk of the Court.

The address for service of objections to the Settlement or to the Fee and Expense Application on counsel for Defendants is:

Anne E. Rea
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603

The address of the Clerk of Court for purposes of filing objections or other pleadings is:

Clerk, United States District Court
for the District of Connecticut
Brien McMahon Federal Building
915 Lafayette Boulevard
Bridgeport, CT 06604

You may also be able to file any objection through PACER, the Court's on-line filing system. If you file electronically, you need not serve any of the attorneys by mail. They will receive copies of your filings automatically.

Dated: _____, 201_

/s/ Janet C. Hall, Judge
By Order of the United States District Court
for the District of Connecticut

EXHIBIT C

to Settlement Agreement

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

)	
EDWARD TEDESCO, individually and on)	
behalf of others similarly situated,)	
)	
Plaintiffs,)	
)	No. 3:07 CV 1640 (JCH)
vs.)	
)	
BANK OF AMERICA CORPORATION, et al.,)	
)	
Defendants.)	
)	
)	

FINAL ORDER AND JUDGMENT

This matter, having come to the Court for determination whether the Settlement Agreement executed on December 7, 2010, and as amended on January 4, 2011 and March 16, 2011, by Plaintiff, on behalf of the Class, and Defendants, should be approved as fair, reasonable and adequate, the Court having considered the submissions of the parties, and the evidence and arguments at the Fairness Hearing, it is **HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The terms that are capitalized in this Final Order and Judgment shall have the meaning ascribed to those terms in the Settlement Agreement, which is attached hereto as Exhibit 1.

2. The Court has jurisdiction over the subject matter of this action, the Parties and the Class.

3. This Court finds that the Class, as provisionally certified in this Court's Preliminary Approval Order of January 11, 2011 satisfies all requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(1)(A) and (b)(2). Specifically, this Court finds that the Class is so numerous that joinder of all Class Members is impracticable, that there are common questions of law and fact, that the claims of Plaintiff are typical of the claims of the Class and that Plaintiff and Class Counsel have fairly and adequately protected the interests of the Class. This Court further finds that the prosecution of separate actions by the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants and that Defendants have acted or refused to act on grounds generally applicable to the Class, making final injunctive relief with respect to the Class appropriate.

4. This Court reaffirms its Order appointing Plaintiff Edward Tedesco as representative of the Class and appointing Thomas G. Moukawsher of Moukawsher and Walsh LLC as Class Counsel.

5. The Notice was properly mailed, as established by the Declaration of Abigail Schwartz dated May 19, 2011. (*See* Edward Tedesco's Memorandum of Law in Support of Final Approval of Class Settlement, Ex. 12.) This Court finds that the Notice fairly and adequately informed the Class of the Settlement and their rights and was the best notice practicable, and fully complied with Federal Rule of Civil Procedure 23 and due process. The costs of Notice and the expenses of settlement administration shall be paid by the Plan as an administrative expense.

6. The Settlement Agreement is approved as fair, reasonable and adequate and in the best interests of the Class, and the Parties are directed to implement its terms. Upon the Effective Date, by virtue of this Final Order and Judgment, the Released Parties shall be released from the Released Claims, and the Class shall be bound by a covenant not to sue the Released Parties in connection with the Released Claims. Schedule A to this Final Order and Judgment, which is attached to Class Counsel's Unopposed Motion to File Schedule A to the Final Order and Judgment Under Seal ("Schedule A") and is also attached hereto, contains a list of the Class Members who have been identified by the Parties. Upon the Effective Date, each Class Member identified in Schedule A shall be entitled to a Settlement Amount in the amount set forth in Schedule A.¹

7. The Class is permanently enjoined from instituting, asserting or prosecuting, in any capacity, any action or proceeding arising out of or related to the Released Claims against any Released Party.

8. This Litigation is dismissed with prejudice and without costs, except as provided in a separate order on Class Counsel's Fee and Expense Application.

9. This Court is awarding, by separate order of this date, fees and expenses to Class Counsel, and an incentive award to Plaintiff, each of which shall be paid by the Plan as an administrative expense.

10. The Settlement Agreement is not, and shall not be construed to be, an admission of liability or wrongdoing by any Defendant, and this Court makes no further finding or

¹ The Settlement Amounts set forth in Schedule A do not include the value of any Interest as set forth in Section 3.2 of the Settlement Agreement.

determination. Neither the Settlement Agreement nor any of the proceedings in connection therewith shall be ordered or received in evidence for any purpose, except that Defendants may submit this Final Order and Judgment to support a claim of *res judicata*, collateral estoppel, release or any theory of claim or issue preclusion, or they may submit this Final Order and Judgment in any action to enforce the injunctive provisions of paragraph 7.

11. Without affecting the finality of this Judgment, this Court retains jurisdiction over the administration, interpretation, effectuation and enforcement of this Settlement.

Date: _____

Janet C. Hall
United States District Judge

SCHEDULE A
SUBJECT TO
MOTION TO SEAL