

# EXHIBIT 1

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

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DONNA C. RICHARDS, )  
                        )  
                        )  
Plaintiff,            )  
                        )  
vs.                    ) Case No. 3:04-CV-1638 (JCH)  
                        )  
FLEETBOSTON FINANCIAL CORP., )  
FLEETBOSTON FINANCIAL PENSION )  
PLAN, and BANK OF AMERICA )  
CORPORATION,            )  
                        )  
Defendants.           )

**CLASS ACTION  
SETTLEMENT AGREEMENT**

This Agreement of Settlement and Compromise (“Settlement Agreement” or “Agreement”) is entered into this 16th day of April, 2008 by and between Plaintiff Donna C. Richards, on her own behalf and on behalf of the plaintiff Class defined herein, and Defendants FleetBoston Financial Corporation, FleetBoston Financial Pension Plan and Bank of America Corporation.<sup>1</sup>

**RECITALS**

1. This class action lawsuit was filed on September 30, 2004. On March 31, 2006 the Court certified a class comprised of all persons who:

- (a) are former or current employees of FleetBoston Financial Corporation (including certain specified predecessors and successors) who on

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<sup>1</sup> FleetBoston Financial Corporation merged with and into Bank of America Corporation on April 1, 2004, and FleetBoston Financial Corporation is no longer a separate legal entity. The FleetBoston Financial Pension Plan is currently known as the Bank of America Pension Plan for Legacy Fleet.

December 31, 1996 were not at least 50 years of age with 15 years of vesting service, and

- (b) participated in the Fleet Financial Group, Inc. Pension Plan both (i) before January 1, 1997, and (ii) at any time since January 1, 1997.

2. Plaintiff's Second Amended Complaint alleges that Defendants violated the Employee Retirement Income Security Act of 1974, as amended, in connection with the January 1, 1997 amendment to the Fleet Financial Group, Inc. Pension Plan that adopted a cash balance formula for certain plan participants. The Second Amended Complaint asserts claims of age discrimination under ERISA § 204(b)(1)(H) (Count I); inadequate notice under ERISA § 204(h) (Count II); inadequate Summary Plan Description under ERISA § 102 (Count III); breach of fiduciary duty (Count IV); and improper use of a pre-retirement mortality discount (Count V).

3. 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 extensive factual discovery and has been assisted by retained experts in his analysis. Class Counsel has also 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 all data relied upon in the calculations required by the Settlement.

4. 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. It provides the certainty of substantial immediate benefits, while continued litigation encompasses significant risk and delay.

5. Defendants have at all times denied the allegations of Plaintiff's Complaint and 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 burdensome and protracted litigation. Entry into this Settlement Agreement is not an admission of any liability by Defendants.

6. 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.

## I. **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 **Accrued Benefit.** Accrued Benefit has the meaning set forth in Section 1.1 of the Plan, subject to the provisions of the Settlement Plan Amendment that the Settlement Amount, once credited, shall be nonforfeitable.

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.

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 Section 3A.2 of the Plan.

**1.5     Cash Balance Amendment.** The Cash Balance Amendment is the amendment to the Fleet Financial Group, Inc. Pension Plan effective January 1, 1997.

**1.6     Class.** The Class is the settlement class as defined in the Preliminary Approval Order, attached hereto as Exhibit A, modified from the class previously certified as set forth in the Preliminary Approval Order, *inter alia*, (i) to be expressly limited only to Vested Participants and Beneficiaries of such Vested Participants, and (ii) to encompass all claims that were or could have been brought.

**1.7     Class Counsel.** Class Counsel is Thomas G. Moukawsher & Walsh LLC.

**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    Current Participants.** Current Participants are all Participants who, as of the date that their Settlement Amount is credited to the Plan, have an existing Cash Balance Account.

**1.11    Current Plan Amount.** For any Participant who was an employee of Bank of America Corporation or its affiliates at December 31, 2006, the Current Plan Amount is the lump sum present value of the Participant's Accrued Benefit calculated at December 31, 2006. For Participants who terminated employment prior to December 31, 2006, the Current Plan Amount is the lump sum present value of the Participant's Accrued Benefit at the date of termination of employment. Lump sum present values are determined using the Present Value Assumptions.

**1.12 Defendants.** The Defendants are FleetBoston Financial Corporation (now merged into Bank of America Corporation), FleetBoston Financial Pension Plan (now the Bank of America Pension Plan for Legacy Fleet) and Bank of America Corporation.

**1.13 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 B 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. In the event Defendants have not received a favorable determination letter within a reasonable period, which for this purpose shall mean six months or more after the Court grants Final Approval, the parties shall meet and confer, with the assistance of Eric D. Green of Resolutions, LLC, who has served as mediator between the parties.

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

**1.15 Fairness Hearing.** The Fairness Hearing is the hearing before the Court pursuant to Federal Rule of Civil Procedure 23(e) to 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.

**1.16 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 amounts specified in Section VII of this Settlement Agreement.

**1.17 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 B to this Settlement Agreement.

**1.18 Final Order and Judgment.** The Final Order and Judgment is a Final Order and Judgment in the form attached hereto as Exhibit B.

**1.19 Fleet Financial Pension Plan.** The Fleet Financial Pension Plan is the Fleet Financial Group, Inc. Pension Plan, including all Legacy Plans, that was the predecessor to defendant FleetBoston Financial Pension Plan (now known as the Bank of America Pension Plan for Legacy Fleet).

**1.20 Floor Amount.** The Floor Amount is equal to the Floor Amount Percentage multiplied by the difference between a Participant's Ongoing Prior Plan Amount and Current Plan Amount, measured at date of termination of the Participant's employment or December 31, 2006, whichever is earlier. For Participants who terminated employment before December 31, 2006, the Floor Amount is credited with interest at 6.5% per annum from date of termination to December 31, 2007. For Participants who were employed by Bank of America or its affiliates on December 31, 2006, the Floor Amount is credited with interest at 6.5% per annum for calendar year 2007.

**1.21 Floor Amount Percentage.** For Participants who terminated employment on or before December 31, 2006 and (a) were at termination eligible for early retirement, (b) whose age plus years of credited service, as defined by their Legacy Plans, at January 1, 1997 equaled 65-75 points, and (c) who elected a lump sum payment of their benefits prior to December 31, 2006, the Floor Amount Percentage shall be 35%. For all other Participants, the Floor Amount Percentage shall be 25%.

**1.22 Inactive Participants.** Inactive Participants are members of the Class who accepted a lump sum payment of their Accrued Benefit under the Plan or had commenced a distribution of benefits under the Plan before the date that their Settlement Amount is credited to the Plan.

**1.23 IRS.** The IRS is the Internal Revenue Service.

**1.24 Legacy Plans.** The Legacy Plans are the Shawmut Retirement Plan (“Shawmut Plan”); the Fleet Financial Group, Inc. Employees’ Retirement Plan (“Fleet Plan”); and the NatWest Bank, N.A. Retirement Plan (“NatWest Plan”).

**1.25 Litigation.** The Litigation is the above-captioned action, commenced by Donna Richards.

**1.26 Minimum Payment.** The Minimum Payment is \$199.99.

**1.27 New Cash Balance Account.** The New Cash Balance Account is the account established pursuant to Section 5.2 of this Settlement Agreement.

**1.28 New Cash Balance Credit Amount.** The New Cash Balance Credit Amount is the greater of the Prior Plan Credit and the Floor Amount. Effective January 1, 2008, the New Cash Balance Credit Amount shall be credited with Interest Credits pursuant to Section 3A.5 of the Plan.

**1.29 Normal Retirement Date.** A Participant’s Normal Retirement Date is the first day of the month coincident or next following the Participant’s attainment of his or her Normal Retirement Age, as defined in Section 1.42 of the Plan.

**1.30 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 members of the Class 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 Participants whose original mail Notice is returned as undeliverable.

**1.31 Ongoing Prior Plan Amount.** The Ongoing Prior Plan Amount is an amount determined for all Participants except for Rehire A Plus B Participants and Possible Participants (a) based upon data provided by Defendants that was reviewed and accepted by Class Counsel and the actuarial and data experts retained on behalf of the Class, (b) using an agreed methodology intended to approximate the normal retirement benefit that each Participant would have been entitled to under the Legacy Plan applicable to such Participant had such Legacy Plan remained in effect until the earlier of December 31, 2006 or the Participant's date of employment termination, and (c) converted to a lump sum value discounted to the earlier of December 31, 2006 or the date of the Participant's termination of employment using the Present Value Assumptions.

**1.32 Participant.** A Participant is any member of the Class.

**1.33 Parties.** The Parties are the Plaintiff and the Defendants.

**1.34 Plaintiff.** The Plaintiff is Donna C. Richards.

**1.35 Plan.** The Plan is the FleetBoston Financial Pension Plan (now known as the Bank of America Pension Plan for Legacy Fleet), as amended and restated effective January 1, 2002 and as subsequently amended.

**1.36 Possible Participants.** There exists insufficient data for 227 employees to determine whether they meet the Class definition and, if so, to calculate any Settlement Amount greater than the Minimum Payment. These persons are referred to as Possible Participants. Although it is uncertain whether these persons are entitled to be included within the Class, they

will receive Notice, be provided the Minimum Payment and be bound by the Final Order and Judgment and the Release.

**1.37 Preliminary Approval.** Preliminary Approval is the entry of an Order by the Court, in the form attached hereto as Exhibit A, that, *inter alia*, (a) modifies the definition of the Class from the Court's prior order on certification to, *inter alia*, (i) explicitly provide that only Vested Participants and the Beneficiaries of Vested Participants be in the Class, and (ii) expand certification to all claims that were or could have been brought in this Litigation; (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 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.

**1.38 Preliminary Approval Order.** The Preliminary Approval Order is an Order in the form attached hereto as Exhibit A.

**1.39 Present Value Assumptions.** The Present Value Assumptions are used to calculate the lump sum present value of an annuity. The Present Value Assumptions apply a discount rate of 6.5% and the following mortality assumptions:

- (a) GA83 unisex mortality for employees terminating prior to January 1, 2003.
- (b) GAR94 unisex mortality for employees terminating on or after January 1, 2003.

**1.40 Prior Plan Credit.** The Prior Plan Credit is the difference between the Prior Plan Calculation and the Current Plan Amount. For Participants who terminated before December 31, 2006, the Prior Plan Credit is credited with interest at 6.5% per annum from date of termination to December 31, 2007. For Participants who were employed by Bank of America or its affiliates on December 31, 2006, the Prior Plan Credit is credited with interest at 6.5% per annum for calendar year 2007.

**1.41 Prior Plan Calculation.** The Prior Plan Calculation is the amount derived by multiplying each Participant's Ongoing Prior Plan Amount by the applicable Percentage from the Prior Plan Calculation Table.

**1.42 Prior Plan Calculation Table.** The Prior Plan Calculation table is based on a Participant's age plus years of credited service at December 31, 2006 as follows:

<b>Age and Service Points</b>	<b>Percentage</b>
≥ 91	85%
90	82%
89	79%
88	76%
87	73%
≤ 86	70%

**1.43 Rehire A Plus B Participants.** Rehire A Plus B Participants are Participants who were not employed by Defendants or their predecessors on January 1, 1997, but were participants in one or more Legacy Plan at some time before that date, who were rehired and resumed participation in the Plan after that date, and who were entitled to receive both their Legacy Plan benefit and their benefit under the Cash Balance Amendment.

**1.44 Released Claims.** The Released Claims are all actions, causes of action, claims, demands, liabilities, obligations, rights and suits whatsoever, whether equitable, legal or administrative, as well as any claim for attorneys' fees or expenses that any Participant now has, may have or ever had, including claims that the Participant does not know or suspect to exist in his or her favor at the Effective Date - which if known to him or her, might have naturally affected the decision to accept the Settlement Agreement - that were or might have been brought in the Litigation or that arise out of, in whole or in part, the facts, events, transactions or occurrences alleged in the Litigation. The Released Claims include, but are not limited to, all claims that the Cash Balance Amendment, by its terms, implementation or administration, violated ERISA, the Code, the Age Discrimination in Employment Act or any other statute, regulation or source of law. The Released Claims encompass any claim in connection with benefits earned by any Participant before or after the Effective Date based on claims that the Cash Balance Amendment violated any of the statutes identified above, and include any claims related to the calculation of any Class member's Settlement Amount, but do not include any claim under the terms of any benefit plan sponsored by the Defendants relating to an alleged miscalculation of any Class member's benefits where such claim of miscalculation is not related to (i) this Settlement or (ii) the matters alleged in the Litigation. The Released Claims expressly include any and all rights any Participant 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

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

**1.45 Released Parties.** The Released Parties are the Defendants and each of their predecessors, successors, parents, subsidiaries, affiliates, divisions, assigns, officers, directors, committees, employees, fiduciaries, administrators, actuaries, agents, insurers, representatives, attorneys, retained experts and trustees.

**1.46 Rule of 85 Early Retirement Guarantee.** Rule of 85 Participants (as defined below) who would have been eligible under the terms of their Legacy Plan for early retirement on December 31, 2006, or date of termination if earlier, and who receive or commence to receive their benefits prior to the Participant's Normal Retirement Date, may elect, during the applicable election period provided in Section 6.5 of the Plan, an annuity commencing before the Participant's Normal Retirement Date on their Rule of 85 Minimum Guarantee Amount. The Rule of 85 Early Retirement Guarantee shall be calculated by applying the applicable early retirement factors from the Participant's Legacy Plan to the Participant's Rule of 85 Minimum Guarantee Amount. If a Participant who elects a Rule of 85 Early Retirement annuity shall have received or commenced to receive a distribution before the Effective Date, the Participant's benefits under this section 1.46 shall be reduced to account for that distribution as follows: (i) if the Participant commenced benefits before January 1, 2007, the Rule of 85 Minimum Guarantee Amount shall be reduced as provided in section 1.47 (by the amount of the Accrued Benefit previously distributed calculated as of such Participant's Normal Retirement Date) before application of the applicable Legacy Plan early retirement factors; and (ii) if the Participant commenced benefit distribution after December 31, 2006 but before the Effective Date, the Rule of 85 Minimum Guarantee Amount (not reduced by the amount of the Accrued Benefit

previously distributed calculated as of such Participant's Normal Retirement Date) shall be (a) multiplied by the applicable early retirement factors from the Participant's Legacy Plan and (b) then have subtracted from it the actuarial equivalent (based on Plan factors in effect as of the date of commencement of distribution of the Participant's benefits under this section 1.46) of the early retirement annuity the Participant previously commenced or could have commenced (in the case of a prior lump sum distribution). Participants are deemed to be eligible for early retirement under the terms of their Legacy Plan as of a date if they are less than age 65 at such date and meet the following criteria on or before terminating employment: (i) former Fleet Plan participants – attain age 55 with 10 years of vesting service; (ii) former Shawmut Plan participants – attain age 55 with 10 years of vesting service; (iii) former NatWest Plan participants – attain either (a) age 55 with 10 years of vesting service, or (b) age 50 and the sum of age and vesting service is equal to or greater than 70. A Participant who elects a Rule of 85 Early Retirement Guarantee shall not be entitled to any other benefit under the Plan.

**1.47    Rule of 85 Minimum Guarantee Amount.** Rule of 85 Participants (as defined below) are guaranteed an amount at normal retirement age no less than the amount resulting from steps (a) and (b) of the calculation of the Ongoing Prior Plan Amount described in Section 1.31 multiplied by the applicable percentage set forth in the Prior Plan Calculation Table. This is the "Rule of 85 Minimum Guarantee Amount." At the time a Rule of 85 Participant commences benefits, the Rule of 85 Minimum Guarantee Amount shall be compared to the amounts the Participant has accrued under the Plan, including the Settlement Amount. A Rule of 85 Participant shall be entitled to the greater of (1) the Rule of 85 Minimum Guarantee Amount, or (2) the Rule of 85 Participant's Accrued Benefit as of such Participant's Normal Retirement Date (taking into account any Settlement Amount included in such Accrued Benefit). If the

Participant received or commenced to receive a distribution before the Effective Date, the Rule of 85 Minimum Guarantee Amount shall be reduced by the amount of the Accrued Benefit (calculated as of Normal Retirement Date) previously received or commenced. If a Rule of 85 Participant elects to take his or her benefit in an optional form other than an annuity at Normal Retirement Date, it shall be calculated consistent with the terms of the Plan.

**1.48    Rule of 85 Participant.** A Rule of 85 Participant is any Participant for whom an Ongoing Prior Plan Amount was calculated whose (i) age at December 31, 2006 and (ii) years of credited service, as defined in their Legacy Plan, at the earlier of their first date of termination after January 1, 1997 or December 31, 2006 totaled at least 85.

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

**1.50    Settlement Administrator.** The Settlement Administrator is Rust Consulting, Inc.

**1.51    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 8.15 of the Plan to offset the amount of the prior overpayment against future benefit payments or any amount payable under this Settlement Agreement.

**1.52    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.

**1.53 Vested Participant.** A Vested Participant is (1) a Participant who is an eligible employee as defined in Section 1.22 of the Plan and was vested under the Plan as of December 31, 2006, or (2) in the event that a Participant had multiple dates of termination, a Participant who was vested under the Plan as of their first date of termination that post-dates January 1, 1997.

## **II. SETTLEMENT APPROVAL PROCESS**

**2.1 Preliminary Approval.** The Parties shall jointly request Preliminary Approval of the Settlement Agreement through entry of an order in the form of Exhibit A. 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) amend the prior certification order as shown in Exhibit A to, *inter alia*, provide that the class includes only Vested Participants and Beneficiaries of Vested Participants who are currently entitled to benefits and that the certified claims include all claims that were or could have been brought in the Litigation;
- (b) preliminarily approve the Settlement Agreement as fair, reasonable and adequate and in the best interests of the Plaintiff and the Class;
- (c) 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;
- (d) stay all proceedings in the Litigation other than proceedings necessary for the presentation of the Settlement Agreement at the Fairness Hearing;
- (e) approve the appointment of Rust Consulting, Inc. as Settlement Administrator, to assist the Parties in the administration of the Settlement;

- (f) establish dates for (i) filing the Fee and Expense Application; (ii) filing objections to the Settlement Agreement or Class Counsel's Fee and Expense Application; (iii) filing responses to any such objections; and (iv) the Fairness Hearing; and
- (g) 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.

**2.2      Class Notice.** After the Court enters an Order of Preliminary Approval, Defendants shall provide the class with Notice. Defendants will request that the Settlement Administrator send the Notice to all persons for whom Defendants have an address, by first class mail, postage prepaid. The Settlement Administrator shall make reasonable efforts to locate and send a second mail Notice to those Participants whose original Notice is returned as undeliverable. The Notices 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 award; (c) the right of members of the Class to object to the Settlement Agreement, the Fee and Expense Application or the incentive award; and (d) the date and time for the Fairness Hearing.

**2.3      Fee and Expense Application.** Class Counsel shall file, no later than 14 days after the grant of Preliminary Approval, a Fee and Expense Application, subject to the provisions of Section VII 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 award to Plaintiff. Any judgment order on the Fee and Expense

Application or the incentive award 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 award 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 award, the obligation of Defendants to pay the awarded fees and expenses or incentive award shall be automatically stayed until the later of the Effective Date and the date that a final judgment, no longer subject to appeal, has been entered awarding Class Counsel's attorneys' fees and expenses. Any final judgment awarding attorneys' fees and costs or an incentive award that is no longer subject to appeal will be paid from the Plan as an administrative expense of the Plan. No award of attorneys' fees and costs will be paid to the extent such award exceeds the amounts specified in Section 7.1. No incentive award will be paid to the extent such award exceeds the amount specified in Section 8.1.

**2.4     Objections to Settlement.** Any member of the Class wishing to object to the Settlement Agreement, to Class Counsel's Fee and Expense Application or to the proposed incentive award shall file 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	Stanley A. Twardy, Jr. Day Pitney LLP One Canterbury Green Stamford, CT 06901	Thomas G. Moukawsher Moukawsher & Walsh LLC 21 Oak Street, Suite 219 Hartford, CT 06106
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Any member of the Class 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 approval of the Settlement Agreement, to Class Counsel's Fee and Expense Application or to any incentive award, either before the Court or on appeal.

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

**2.5     Fairness Hearing.** The Fairness Hearing shall be on a date set by the Court, after the deadlines for Notice, and any objections and responses thereto. At the Fairness Hearing, the Parties will request a Final Order and Judgment in the Form of Exhibit B hereto that, *inter alia*:

- (a) finds that all relevant elements of Rule 23 have been satisfied, including the existence of a class pursuant to Rule 23(b)(1)(A) and 23(b)(2);
- (b) finds the Notice adequate for purposes of Rule 23 and due process;
- (c) enters final judgment approving the Settlement Agreement, releasing the Released Parties from the Released Claims and enjoining the Class from

prosecuting any action against any of the Released Parties for the Released Claims;

- (d) 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 amounts specified in Section 7.1 of the Settlement Agreement), and any incentive award;
- (e) dismisses the Litigation with prejudice;
- (f) permanently enjoins all Participants from instituting any action against the Released Parties regarding or related to any of the Released Claims; and
- (g) provides the Court with continuing jurisdiction to enforce the Final Order and Judgment.

### **III. SETTLEMENT AMOUNTS**

**3.1** The Settlement Amount is the greater, as of December 31, 2007, of (1) the New Cash Balance Credit Amount, or (2) the Minimum Payment. Plaintiff's actuary, Claude Poulin, has determined that the settlement, including the Settlement Amount, the Rule of 85 Guarantees, the payment of Class Counsel's reasonable fees and expenses at the agreed limit and the payment of an Incentive Award at the agreed limit, provides total value to the Class of \$83,401,000. The Defendants' actuary Christopher M. Bone has reviewed this determination and agrees that plaintiff's actuary's estimate of total value is reasonable. Defendants agree to adequately fund the trust *corpus* in order to make all credits and payments required by this Settlement.

#### **IV. RULE OF 85 PARTICIPANTS**

**4.1     Rule of 85 Minimum Guarantee Amount.** Upon the later of the Effective Date or the date a Rule of 85 Participant commences benefits, the Rule of 85 Participants shall be entitled to the Rule of 85 Minimum Guarantee Amount.

**4.2     Rule of 85 Early Retirement Guarantee.** A Participant who qualifies for the Rule of 85 Early Retirement Guarantee shall have the option to elect, as governed by Section 1.46 of this Settlement Agreement and Section 6.5 of the Plan, the Rule of 85 Early Retirement Guarantee.

#### **V. IMPLEMENTATION OF SETTLEMENT**

**5.1     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 Current Participant's Cash Balance Account with the Participant's Settlement Amount in accordance with Section 5.5 of this Settlement Agreement.

**5.2     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 Participants 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 5.5 of this Settlement Agreement, and those accounts shall thereafter be administered in accordance with the terms of the Plan, as amended.

**5.3     Distributions of the Settlement Amount to Inactive Participants.** Inactive Participants who are entitled to a Settlement Amount equal to or greater than \$200 will receive their Settlement Amounts in a form and manner provided by the Plan, including without limitations Section 6.3 of the Plan, governing payment of small amounts. Inactive Participants who are entitled to a Settlement Amount of \$199.99 shall, to the extent permitted by ERISA,

receive a distribution of the Settlement Amount in the form of a lump sum and shall not have the option to elect another form of benefit distribution.

**5.4     Payment to Beneficiary.** Should any Beneficiary be lawfully entitled to all or part of a distribution of the Settlement Amount, payment to such Beneficiary shall be made as provided in the Plan.

**5.5     Timing of Credits and Payments.** No credits or payments shall be made before the Effective Date. Defendants shall use best efforts to make all credits to accounts and payments within 60 days of the Effective Date.

**5.6     Benefits Subject to Plan.** The Settlement Amount, Rule of 85 Minimum Guarantee Amount and Rule of 85 Early Retirement Guarantee 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 8, governing Administration of the Plan. Settlement Amounts for Participants who cannot be located shall be governed by Section 8.8 of the Plan and shall remain available for distribution 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.

## **VI.     RELEASE**

**6.1**     By operation of the Final Order and Judgment, upon the Effective Date, the Class shall, by virtue of this Settlement, release the Released Parties from the Released Claims. Each Participant shall indemnify the Released Parties for any attorneys' fees and expenses incurred by the Released Parties in defending any claim or action brought by such Participant that is determined to encompass a Released Claim.

**6.2 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.

**VII. ATTORNEYS' FEES AND EXPENSES**

**7.1** 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 \$17,250,000 in fees and \$325,000 in expenses. 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 these maximums. Class Counsel agrees to waive any amount awarded by the Court that exceeds these maximums and not to seek payment from Defendants, the Plan, or the Class of any amount in excess of \$17,250,000 in fees and \$325,000 in expenses. The Plan shall pay the fee and expense award within 30 days of the later of (a) the Effective Date and (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.

**VIII. INCENTIVE AWARD TO PLAINTIFF**

**8.1** Subject to Court approval, the Plan shall pay, within 30 days of the later of (a) the Effective Date and (b) the date any incentive award 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 award to Plaintiff, in an amount determined by the Court, but in no event in excess of \$15,000.

## **IX. MISCELLANEOUS**

**9.1 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.

**9.2 Failure of 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 shall be vacated, and the Litigation shall resume without prejudice to the rights of the Parties. Upon a failure of 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 the Litigation.

**9.3 Communications With Media or Class Members Prior to the Date the Agreement is Filed With the Court.** Prior to the date that this Agreement is filed with the Court, the Parties shall not initiate any communication with the media concerning the Settlement. In the event that the media or any Class Member makes any inquiry of Plaintiff or Class Counsel regarding the Settlement prior to the date that this Agreement is filed with the Court, Plaintiff and her counsel agree to respond by referring the media or Class Member to Bank of America's publicly-disclosed Form 10-Q filed on November 9, 2007.

**9.4 Responses to Inquiries by Class Members After the Agreement is Filed With the Court.** After the Agreement is filed with the Court, the Parties may respond to inquiries by

Participants regarding the Settlement. The responses provided to such questions will not create any liability or obligations that are not already specified in this Agreement. Defendants 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 Participant inquiries. Participants shall be able to learn, through the website or the call center, their Settlement Amount.

**9.5     Tax Qualification of Payments.** The Parties recognize that the amounts contemplated under this Settlement Agreement – including amounts to be credited or paid to Participants, attorneys' fees and expenses paid to Class Counsel and the incentive award 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. The parties further agree that, if necessary, some or all of the amounts to be paid under this Settlement may be paid from one or more nonqualified plans sponsored by Bank of America.

**9.6     Tax Consequences of Distribution.** Defendants make no representations or warranties regarding the income tax or other consequences to any Participant of the payment of

the Settlement Amount, the Rule of 85 Minimum Guarantee Amount or the Rule of 85 Early Retirement Guarantee, regardless of the form of payment.

**9.7     Availability of Data.** The Parties have jointly used data reasonably available to identify Participants and to calculate the Settlement Amounts. Calculations of the Ongoing Prior Plan Amount and Current Plan Amount are intended to approximate and not to be an exact replication of those amounts. All determinations as to class membership and the Settlement Amount to which each Participant is entitled, and Rule of 85 Guarantees, if applicable, 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.

**9.8     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 Eric D. Green of Resolutions, LLC and such issues shall be brought before the Court only if such mediation cannot resolve the issues.

**9.9     Entire Agreement.** This is the entire agreement between the Parties and it supersedes any prior agreements, written or oral, including the Agreement in Principle executed September 20, 2007. This Settlement Agreement cannot be altered, modified or amended except through a writing executed by all Parties.

**9.10    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 arm's-length by Parties represented by counsel.

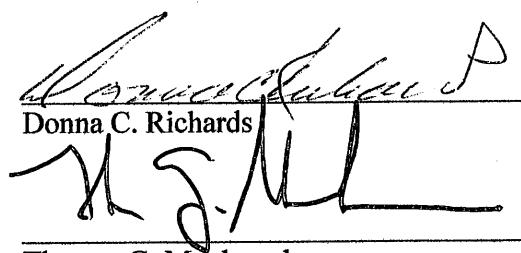
**9.11 Executed in Counterparts.** This Settlement Agreement may be executed in counterparts.

**Agreed to on behalf of Plaintiff and the Class**

Dated: April 16, 2008

By:

Donna C. Richards



Thomas G. Moukawsher

**Agreed to on behalf of Defendants**

Dated: April 16, 2008

Bank of America Pension Plan for Legacy Fleet  
(f/k/a/ FleetBoston Financial Pension Plan)

By:

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

Dated: April 16, 2008

Bank of America Corporation

By:

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

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Dated: April 16, 2008

By:

Donna C. Richards

Thomas G. Moukawsher

**Agreed to on behalf of Defendants**

Dated: April 16, 2008

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By:

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

Dated: April 16, 2008

Bank of America Corporation

By:

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

# **EXHIBIT A**

## **TO SETTLEMENT AGREEMENT**

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

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)  
DONNA C. RICHARDS, )  
                        )  
                        )  
Plaintiff,            )  
                        )  
vs.                    ) Case No. 3:04-CV-1638 (JCH)  
                        )  
FLEETBOSTON FINANCIAL CORP., )  
FLEETBOSTON FINANCIAL PENSION )  
PLAN, and BANK OF AMERICA )  
CORPORATION,            )  
                        )  
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 April 16, 2008 by Plaintiff, on behalf of herself and the Class, and Defendants, and for related relief, including to establish a schedule with respect to a hearing to determine, by way of a 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 this Order shall have the meaning ascribed to those terms in the Settlement Agreement.
2.       On March 31, 2006, the Court certified a class. For purposes of the proposed Settlement, the Court hereby amends and supersedes its prior certification order. The Court certifies a class comprised of all persons who satisfy the following requirements:

- (a) prior to January 1, 1997 the person was an active participant in the Shawmut National Corporation, National Westminster Bank or Fleet Financial Group, Inc. final average pay pension plan;
- (b) after January 1, 1997 the person was an active participant in the Fleet Financial Group, Inc. or FleetBoston Financial Corporation pension plan;
- (c) on December 31, 1996 the person was not at least 50 years old with at least 15 years of past service; and
- (d) the person was vested in his or her pension benefits either as of December 31, 2006 or, for a person with multiple dates of termination, was vested under the Plan as of the first date of termination that post-dates January 1, 1997.

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 Participant's benefits. This Court's March 31, 2006 certification order provided that the Class was certified for certain claims in Plaintiff's Amended Complaint. For purposes of the proposed Settlement, the certification order is further amended and superseded to provide that the Class is certified for all claims that were or could have been brought in this Action, and not merely the claims identified in the Court's certification order of March 31, 2006.

3. The Settlement was negotiated at arms-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 to 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 reasonable attorneys' fees, considering, *inter alia*, the Fee and Expense Application of Class Counsel to be filed on \_\_\_\_\_;

- (c) an incentive award to Plaintiff;
- (d) any timely and proper objections to the Settlement and to the Fee and Expense Application or request for incentive award; and
- (e) any other matters the Court may deem appropriate.

The Court reserves the right to continue or adjourn the Fairness Hearing without any 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.

**4.** 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 is the best notice practicable under the circumstances.

**5.** Defendants shall cause the Notice to be sent to the last known address of each member of the Class by first class mail, with such mailing to be completed by \_\_\_\_\_ . 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.

**6.** Defendants shall file, at least 14 days prior to the Fairness Hearing, an affidavit establishing compliance with the provisions of paragraph 5.

**7.** Class Counsel shall file, within 14 days of this Order, a Fee and Expense Application. Plaintiff shall file, within 14 days of this Order, a request for an incentive award.

**8.** Any member of the Class may, subject to the following conditions, object to the Settlement, to the Fee and Expense Application, or to the request for an incentive award to

Plaintiff, and may appear at the Fairness Hearing in person or through counsel, and present his or her objections. To have any objection considered, the member of the Class 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 member of the Class 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.

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

**10.** 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.

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

**12.** 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 without the prior approval of Class Counsel.

**13.** Should the Settlement not be finally approved, or should the Effective Date not occur, this Preliminary Approval Order, including the modifications to the Court's March 31, 2006 order certifying a class, 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 Action 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: \_\_\_\_\_

ENTER: \_\_\_\_\_

# **EXHIBIT 1**

## **TO**

## **PRELIMINARY APPROVAL ORDER**

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

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION  
INVOLVING FLEETBOSTON FINANCIAL PENSION PLAN  
(FORMERLY KNOWN AS FLEET FINANCIAL GROUP PENSION PLAN)**

DONNA C. RICHARDS,

Plaintiff,

vs.

FLEETBOSTON FINANCIAL CORP.,  
FLEETBOSTON FINANCIAL PENSION  
PLAN, and BANK OF AMERICA  
CORPORATION,

Defendants.

} Case No. 3:04-CV-1638 (JCH)

} **IMPORTANT LEGAL DOCUMENT:  
THIS DESCRIBES THE TERMS OF A  
PROPOSED SETTLEMENT THAT  
AFFECTS THE RIGHTS AND BENEFITS  
OF CERTAIN PARTICIPANTS IN THE  
PENSION PLAN FORMERLY KNOWN  
AS THE FLEETBOSTON FINANCIAL  
PENSION PLAN**

**YOU ARE RECEIVING THIS NOTICE BECAUSE IT APPEARS THAT YOU ARE A MEMBER OF THE CLASS. A PROPOSED SETTLEMENT OF THIS CLASS ACTION MAY AFFECT YOUR RIGHTS.<sup>1</sup>**

- The parties to the lawsuit have proposed a Settlement.
- The Court will decide whether to approve the Settlement.
- If the Settlement is approved, you will receive an amount payable under the Settlement and you will release the Defendants from certain claims.

**YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT**

<b>Do Nothing</b>	Receive benefits under the Settlement Agreement and Release claims if the Settlement is approved.
<b>Object</b>	Write to the Court to explain why you object to the Settlement.
<b>Go To The Hearing</b>	Follow the instructions below to ask to be allowed to speak in Court about the fairness of the Settlement.

- These options – and the procedures for each – are explained in this Notice.

**THE CLASS**

**1. Am I a member of the Class?**

You are a member of the Class in this lawsuit if you meet the following requirements: (1) prior to January 1, 1997 you were an active participant in the Shawmut National Corporation, National Westminster Bank or Fleet Financial Group, Inc. final average pay pension plans; (2) after

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<sup>1</sup> The full Settlement Agreement is available at [www.legacyfleetplanresolution.com](http://www.legacyfleetplanresolution.com). Certain words in this Notice are capitalized because those words are specially defined in the Settlement Agreement.

January 1, 1997 you were an active participant in the Fleet Financial Group, Inc. or FleetBoston Financial Corporation pension plan; (3) on December 31, 1996 you were not at least 50 years old with at least 15 years of past service; and (4) you vested, as defined in the Settlement Agreement, in your pension benefits; or (5) you are the Beneficiary of a person satisfying the above criteria and, as beneficiary, have a current legal entitlement to receive some or all of the Participant's benefits. If you have any questions as to whether you meet these requirements, you can call (877) 465-4819 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, Donna Richards is representing herself 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?**

On January 1, 1997 the pension plan covering employees of Fleet Financial Group, Inc. ("Fleet"), including at the time former employees of Shawmut National Corporation and National Westminster Bank, which were each acquired by Fleet, was converted to a cash balance formula for Participants who were not then 50 years old with 15 years of service. The Plaintiff, suing on behalf of all Participants converted to the cash balance formula on January 1, 1997, claims that the notice provided in connection with the conversion was inadequate under the Employee Retirement Income Security Act of 1974 ("ERISA"), that certain provisions in the cash balance formula violate provisions of ERISA prohibiting age discrimination and backloading of benefits, that Summary Plan Descriptions provided to Participants were inadequate 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 appointed by the Court to represent the Class, believe the claims to 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 for the Class may not occur for years. The proposed Settlement provides certain and immediate benefits. 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?**

Each Class member is entitled to a Settlement Amount. Different Class members will receive different amounts. This is because of the nature of the claims being settled. The Plaintiff alleged that certain Participants experienced a decline in the value of the cash balance formula benefits they received and the benefits they would have received had the cash balance amendment not occurred and the prior plan had continued. Plaintiff alleged that the decline was greater for older, longer service Participants. The amounts available through this Settlement are greater for those who were alleged to have experienced greater differences between the benefits they would have received under the prior plan had it continued and their cash balance benefits. Participants who experienced less of a difference, or who benefited from the change to a cash balance formula, and certain Participants who were not employed on January 1, 1997 or for whom the parties have very limited information, will receive smaller amounts in the Settlement.

**6. How was my Settlement Amount calculated?**

Settlement calculations were made using two formulas. A Participant will receive the greater of the two calculations or a minimum payment, described below. The Parties performed

calculations using a method that was intended to approximate the benefit that Class members would have earned had the Plan never been amended to adopt the cash balance formula. The estimated benefits that would have been earned under the plan had it not been amended were measured at the earlier of a Participant's first date of termination after January 1, 1997 or December 31, 2006. This estimated calculation of the Participant's Ongoing Prior Plan Amount was used for both Settlement formula calculations.

#### **A. The First Calculation.**

For the first calculation, the parties took a percentage from 70% to 85% of the Ongoing Prior Plan Amount, depending on the Participant's age and years of service at December 31, 2006, as shown by this chart:

Age and Service Points	Percentage
$\geq 91$	85%
90	82%
89	79%
88	76%
87	73%
$\leq 86$	70%

The Parties then subtracted from this amount the Participant's benefits under the cash balance formula, also valued at the earlier of the first date of termination after January 1, 1997 or December 31, 2006. The amount calculated was credited with interest at 6.5% until December 31, 2007.

#### **B. The Second Calculation.**

The Parties then calculated a second amount, known as the Floor Amount. For most Participants the floor is 25% of the difference between the estimated Ongoing Prior Plan Amount (not multiplied by the age and service-based percentages above) and the cash balance benefits calculated at the earlier of date of first termination after January 1, 1997 or December 31, 2006. Certain older, longer service employees who (1) terminated employment before December 31, 2006, (2) were at termination eligible for early retirement, (3) had age plus years of credited service of between 65 and 75 at January 1, 1997, and (4) elected a lump sum, will get a floor of 35% of the difference between their estimated Ongoing Prior Plan Amount at date of termination and their cash balance benefits. The Floor Amount was credited with interest at 6.5% from the date of determination (the earlier of the first date of termination after January 1, 1997 or December 31, 2006) until December 31, 2007.

#### **C. The Settlement Amount.**

Participants will receive the greater of the two calculations, measured at December 31, 2007, or a minimum amount of \$199.99. Typically, Participants who receive the \$199.99 minimum amount benefited from the change to a cash balance formula. Other Class members will receive larger amounts. Plaintiff's actuary, Claude Poulin, has determined that the Settlement, including the Settlement Amounts, the Rule of 85 Guarantees (see below), and Defendants' agreement to pay Class Counsel's reasonable fees and expenses at the agreed limit along with an incentive bonus for the class representative provides total value to the Class of \$83,401,000. The Defendants, after consulting with their expert actuary, agree that this determination is reasonable.

#### **D. You Can Learn Your Settlement Amount.**

The Parties have calculated the Settlement Amount for every member of the Class. It is important that you review your Settlement Amount. Class members can learn their Settlement Amount by visiting [www.legacyfleetplanresolution.com](http://www.legacyfleetplanresolution.com) or calling (877) 465-4819. This Notice contains a unique identification number for you which is the last five digits on page 1 of the Notice appearing directly above your name and address. You will need to provide this identification number to learn your Settlement Amount. If you have questions about how your Settlement Amount was calculated, you may contact Class Counsel, whose address and telephone number are in paragraph 16, for more information. Once this Settlement becomes effective, you will not be able to challenge your Settlement Amount. Depending on the timing and form of any future benefit election that you make and whether you are a Rule of 85 Participant (see below), this Settlement may be of greater value for you than the Settlement Amount currently calculated.

#### **7. Are there any additional payments other than the Settlement Amount?**

The Settlement Amount is intended to compensate Class members for any claims they had from the implementation of the cash balance plan. However, Participants whose (i) age at December 31, 2006, plus (ii) years of credited service, as defined in their Legacy Plan, at the earlier of their first date of termination after January 1, 1997 or December 31, 2006 totaled at least 85, are provided some additional rights in the Settlement. These persons are called "Rule of 85 Participants." They are provided a guarantee, called the "Rule of 85 Guarantee." This Guarantee assures a Rule of 85 Participant that their benefit, at their Normal Retirement Date, will not be less than the applicable percentage from the age and service chart in paragraph 6A, multiplied by the estimated normal retirement benefit that they would have received if the Cash Balance Amendment had not happened and the prior plan had continued in effect through December 31, 2006. In addition, if a Rule of 85 Participant was early retirement eligible, as defined in their Legacy Plan, at December 31, 2006 or date of termination, if earlier, and commences benefits prior to his or her Normal Retirement Date, he or she can elect an early retirement annuity on the Rule of 85 Guarantee amount, calculated using the early retirement factors of the Legacy Plan. If a Rule of 85 Participant has already received benefits, either in a lump sum or annuity, the Rule of 85 Guarantee or Rule of 85 Early Retirement Annuity will be actuarially adjusted to reflect the distributions taken. For most eligible Participants, the Rule of 85 Early Retirement Guarantee will have a greater actuarial value than other available benefits. A small group of Participants who already received all of the benefits of their Legacy Plan and the Cash Balance Amendment, or for whom the Parties have very limited information, cannot qualify as Rule of 85 Participants, even if they otherwise meet the above requirements.

#### **8. When will I get my Settlement Amount?**

The Settlement Amounts will be distributed only if 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 Internal Revenue Service approval of an amendment to the Plan implementing the Settlement. No Settlement Amounts can be distributed until the Court and the IRS have given their approvals. Updates on the progress toward completion will be published at [www.legacyfleetplanresolution.com](http://www.legacyfleetplanresolution.com).

#### **9. How will I get my Settlement Amount?**

The method of distribution depends upon whether you have a current Cash Balance Account and the amount to which you are entitled. Participants who have current Cash Balance Accounts on the date of distribution of the Settlement Amounts will receive their Settlement Amount through a credit to their Cash Balance Account. If, at that date, you have already commenced benefits, you do not have a current Cash Balance Account and you are entitled to a Settlement Amount of \$200 or more, 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. It is currently intended that Participants who already commenced

benefits and are entitled to \$1,000 or less in cash shall receive a single lump sum cash payment pursuant to the terms of section 6.3 of the Plan. If you have already commenced benefits and your Settlement Amount is \$199.99, you will, if permitted by law, receive a check. If this is not permissible, a New Cash Balance Account will be created for you, subject to the terms of the Plan.

**10. 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.legacyfleetplanresolution.com](http://www.legacyfleetplanresolution.com) or call (877) 465-4819 to get updates on the progress of the Settlement. If you have a Cash Balance Account, the credit for the Settlement Amount to your account will be reflected on your statement. If you previously received pension benefits and you are entitled to a payment of \$200 or more, the settlement amount will be credited to a new Cash Balance Account created for you. Finally, if you are to receive cash, after the Settlement is approved you will receive a check. There may be tax consequences in connection with this payment which are discussed in the Addendum at the end of this notice. 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 (877) 465-4819.

**OBJECTING TO THE SETTLEMENT**

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

The Court will hold a Fairness Hearing 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 16, below, on or before [45-day period] 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 do this, 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 ATTORNEY'S FEES AND COSTS**

**12. Who is representing the Class?**

The Court has appointed Thomas G. Moukawsher to represent the Class.

**13. How will the lawyer for the Class be paid?**

Under the proposed Settlement, the attorney's 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 \$17,250,000 in fees, and \$325,000 in expenses. The payment of fees and expenses will not decrease the amount available for the Class. Class Counsel's Fee and Expense Application is available at [www.legacyfleetplanresolution.com](http://www.legacyfleetplanresolution.com).

In addition, because Plaintiff represented the Class throughout the litigation, the Plan will pay, as an administrative expense, an incentive award to Plaintiff, in an amount to be set by the Court not to exceed \$15,000. Plaintiff will also receive a Settlement Amount.

**14. Can I object to the request for attorney's fees and expenses?**

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

**THE SETTLEMENT WILL INCLUDE A RELEASE**

**15. 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 any other claims about the 1997 Cash Balance Amendment that could have been brought. The lawsuit will also be dismissed with prejudice.

**ADDITIONAL INFORMATION**

**16. 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.legacyfleetplanresolution.com](http://www.legacyfleetplanresolution.com). You can also call (877) 465-4819 for more information. In addition, you can call or write to Class Counsel at:

Thomas G. Moukawsher  
Moukawsher & Walsh LLC  
21 Oak Street, Suite 219  
Hartford, CT 06106  
(860-278-7000)  
[tmoukawsher@mwlawgroup.com](mailto: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 addresses for service of objections to the Settlement or to the Fee and Expense Application on counsel for Defendants are:

Stanley A. Twardy, Jr.  
Day Pitney LLP  
One Canterbury Green  
Stamford, CT 06901

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: \_\_\_\_\_

By Order of the United States District Court  
for the District of Connecticut

## ADDENDUM

### SPECIAL TAX NOTICE REGARDING PLAN PAYMENTS

As explained in paragraph 10 of the accompanying Notice of Proposed Settlement, certain Class members who have already commenced benefits will receive a \$199.99 cash settlement payment from the Plan if the Settlement is approved. This Special Tax Notice provides important information about the federal income tax consequences of that \$199.99 cash settlement payment, including how you can defer federal income tax on the payment by rolling it over to an IRA or an eligible employer plan. Please note that this Special Tax Notice applies to you only if you receive the \$199.99 cash settlement payment. It does not apply if you receive a credit to your cash balance account. All references in this special Tax Notice to a "section" are references to sections of the U.S. Internal Revenue Code (title 26 of the United States Code).

#### Tax Consequences Of The Payment

The federal income tax consequences of the \$199.99 cash payment depend on whether the payment is rolled over:

- Payment not rolled over. The amount of your payment will be taxed to you in 2008 unless you roll it over. If you receive the payment before age 59½ and do not roll it over, you may also have to pay an additional tax equal to 10% of the payment. The additional 10% tax generally does not apply to (1) payments that are paid after you separate from service with your employer during or after the year you reach age 55, (2) payments that are paid because you retire due to disability, (3) payments that are paid to an alternate payee under a qualified domestic relations order, (4) payments that do not exceed the amount of your deductible medical expenses or (5) qualified reservist distributions. See IRS Form 5329 for more information on the additional 10% tax.
- Payment rolled over. You can roll over all or part of the payment by contributing it to your IRA or to an eligible employer plan that accepts your rollover. See below for more information regarding rollovers.

#### Rolling Over The Payment

A rollover is the payment of all or part of the \$199.99 cash settlement payment to an IRA or to an eligible employer plan. If you decide to roll over, you must contribute the amount of the payment to an IRA or to an eligible employer plan within 60 days after you receive the payment. The portion of your payment that is rolled over will not be taxed until you take it out of the IRA or the eligible employer plan.

The rollover may be made to a traditional IRA or to a Roth IRA, but may not be made to a SIMPLE IRA or to a Coverdell Education Savings Account (formerly known as an education IRA). The rollover may be made to an eligible employer plan that will accept your rollover. An "eligible employer plan" includes a plan qualified under section 401(a), including a 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; a section 403(a) annuity plan; a section 403(b) tax-sheltered annuity; and an eligible section 457(b) plan maintained by a governmental employer (governmental 457 plan).

An eligible employer plan is not legally required to accept a rollover. Before you decide to roll over your payment to another employer plan, you should find out whether the plan accepts rollovers and, if so, the types of distributions it accepts as a rollover. You should also find out about any documents that are required to be completed before the receiving plan will accept a rollover. If an employer plan accepts your rollover, the plan may restrict subsequent distributions of the rollover amount or may require your spouse's consent for any subsequent distribution. A subsequent distribution from the plan that accepts your rollover may also be subject to different tax treatment than distributions from this Plan. Check with the administrator of the plan that is to receive your rollover prior to making the rollover.

In most cases the entire \$199.99 can be rolled over. However, if you have reached age 70½ and have retired, the tax laws may not permit a certain portion of your payment to be rolled over because the portion is a "required minimum payment" that must be paid to you.

### **Surviving Spouses, Alternate Payees And Other Beneficiaries**

In general, the rules summarized above also apply to persons who receive the \$199.99 cash settlement payment as surviving spouses of Class members or as spouses or former spouses of Class members because such spouses or former spouses are "alternate payees." You are an alternate payee if your interest in the Plan results from a "qualified domestic relations order," which is an order issued by a court, usually in connection with a divorce or legal separation. If you are a surviving spouse or an alternate payee, you may keep the cash settlement payment, in which case the payment will be taxed to you in 2008, or you may roll it over to an IRA or to an eligible employer plan. Thus, you have the same choices as the employee. If you are a non-spouse beneficiary or alternate payee, you may not roll over the payment.

If you are a surviving spouse, an alternate payee, or another beneficiary, your payment is generally not subject to the additional 10% tax described on the first page of this Special Tax Notice, even if you are younger than age 59½.

### **How To Obtain Additional Information**

This Special Tax Notice summarizes only the federal (not state or local) tax rules that might apply to your \$199.99 cash settlement payment. The rules described above are complex and contain many conditions and exceptions that are not included in this Special Tax Notice. Therefore, you may want to consult with a professional tax advisor. Also, you can find more specific information on the tax treatment of payments from qualified employer plans in IRS Publication 575, Pension and Annuity Income, and IRS Publication 590, Individual Retirement Arrangements. These publications are available from your local IRS office, on the IRS's Internet Web Site at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORMS.

BANK OF AMERICA SETTLEMENT ADMINISTRATOR  
C/O RUST CONSULTING, INC.  
P.O. BOX 130  
MINNEAPOLIS, MN 55440-0130

PRESORTED  
FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
Rust Consulting, Inc.

\*12345678\*

**IMPORTANT LEGAL NOTICE**

12345678 - 000 - 99999  
JOHN JOHNSON  
123 STREET AVE  
LOS ANGELES, CA 12345

# **EXHIBIT B**

## **TO SETTLEMENT AGREEMENT**

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

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DONNA C. RICHARDS, )  
Plaintiff, )  
vs. ) Case No. 3:04-CV-1638 (JCH)  
FLEETBOSTON FINANCIAL CORP., )  
FLEETBOSTON FINANCIAL PENSION )  
PLAN, and BANK OF AMERICA )  
CORPORATION, )  
Defendants. )

**FINAL ORDER AND JUDGMENT**

This matter, having come to the Court for determination whether the Settlement Agreement executed on April 16, 2008 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, [the objections filed by certain Class Members] and the evidence and arguments at the Fairness Hearing, it is HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Capitalized terms used in this Final Order and Judgment have the meaning ascribed to those terms in the Settlement Agreement, which is attached hereto.
2. This Court has jurisdiction over the subject matter of this action, the Parties and the Class.
3. This Court finds that the Class, as certified in this Court's Preliminary Approval Order of \_\_\_\_\_, 2008 satisfies all requirements of Federal Rules 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 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 adjudication 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 or declaratory relief with respect to the Class appropriate.

**4.** This Court reaffirms its order appointing Plaintiff as representative of the Class and appointing Class Counsel to that role.

**5.** The Notice was properly mailed, as established by the affidavit of [ ] dated \_\_\_\_\_, 2008. 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. Each member of the Class shall be entitled to (a) his or her Settlement Amount as calculated for the Class member and set forth on Schedule A hereto and, (b) where applicable, his or her Rule of 85 Guarantee or Rule of 85 Early Retirement

Guarantee, calculated pursuant to the applicable early retirement factors, as set forth on Schedule B.

**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 Action 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 such finding or determination. Neither the Settlement Agreement nor any of the proceedings in connection therewith shall be offered 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 the Settlement.

Date: \_\_\_\_\_

ENTER: \_\_\_\_\_