

BANK OF AMERICA CORP /DE/
Form 10-Q
November 03, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the Quarterly Period Ended September 30, 2011

or
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from to

Commission file number:

1-6523

Exact Name of Registrant as Specified in its Charter:

Bank of America Corporation

State or Other Jurisdiction of Incorporation or Organization:

Delaware

IRS Employer Identification Number:

56-0906609

Address of Principal Executive Offices:

Bank of America Corporate Center

100 N. Tryon Street

Charlotte, North Carolina 28255

Registrant's telephone number, including area code:

(704) 386-5681

Former name, former address and former fiscal year, if changed since last report:

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (check one).

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input type="checkbox"/>	Non-accelerated filer (do not check if a smaller reporting company) <input checked="" type="checkbox"/>	Smaller reporting company <input type="checkbox"/>
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Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2).

Yes ☐ No ☒

On October 31, 2011, there were 10,135,871,814 shares of Bank of America Corporation Common Stock outstanding.

Table of Contents

Bank of America Corporation
September 30, 2011
Form 10-Q

INDEX Page

Part I. Financial Information

<u>Item 1. Financial Statements:</u>	
<u>Consolidated Statement of Income</u>	<u>143</u>
<u>Consolidated Balance Sheet</u>	<u>144</u>
<u>Consolidated Statement of Changes in Shareholders' Equity</u>	<u>146</u>
<u>Consolidated Statement of Cash Flows</u>	<u>147</u>
<u>Notes to Consolidated Financial Statements</u>	<u>148</u>
<u>1 - Summary of Significant Accounting Principles</u>	<u>148</u>
<u>2 - Merger and Restructuring Activity</u>	<u>151</u>
<u>3 - Trading Account Assets and Liabilities</u>	<u>152</u>
<u>4 - Derivatives</u>	<u>153</u>
<u>5 - Securities</u>	<u>162</u>
<u>6 - Outstanding Loans and Leases</u>	<u>168</u>
<u>7 - Allowance for Credit Losses</u>	<u>186</u>
<u>8 - Securitizations and Other Variable Interest Entities</u>	<u>188</u>
<u>9 - Representations and Warranties Obligations and Corporate Guarantees</u>	<u>198</u>
<u>10 - Goodwill and Intangible Assets</u>	<u>208</u>
<u>11 - Commitments and Contingencies</u>	<u>209</u>
<u>12 - Shareholders' Equity</u>	<u>217</u>
<u>13 - Accumulated Other Comprehensive Income (Loss)</u>	<u>219</u>
<u>14 - Earnings Per Common Share</u>	<u>219</u>
<u>15 - Pension and Postretirement Plans</u>	<u>220</u>
<u>16 - Fair Value Measurements</u>	<u>222</u>
<u>17 - Fair Value Option</u>	<u>234</u>
<u>18 - Fair Value of Financial Instruments</u>	<u>236</u>
<u>19 - Mortgage Servicing Rights</u>	<u>238</u>
<u>20 - Business Segment Information</u>	<u>239</u>
 <u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	 <u>3</u>
<u>Executive Summary</u>	<u>5</u>
<u>Financial Highlights</u>	<u>14</u>
<u>Balance Sheet Overview</u>	<u>17</u>
<u>Supplemental Financial Data</u>	<u>21</u>
<u>Business Segment Operations</u>	<u>34</u>
<u>Deposits</u>	<u>35</u>
<u>Card Services</u>	<u>37</u>
<u>Consumer Real Estate Services</u>	<u>39</u>
<u>Global Commercial Banking</u>	<u>44</u>
<u>Global Banking & Markets</u>	<u>47</u>
<u>Global Wealth & Investment Management</u>	<u>52</u>
<u>All Other</u>	<u>55</u>
<u>Off-Balance Sheet Arrangements and Contractual Obligations</u>	<u>58</u>

<u>Regulatory Matters</u>	<u>68</u>
<u>Managing Risk</u>	<u>70</u>
<u>Strategic Risk Management</u>	<u>70</u>
<u>Capital Management</u>	<u>70</u>

Table of Contents

<u>Liquidity Risk</u>	<u>77</u>
<u>Credit Risk Management</u>	<u>84</u>
<u>Consumer Portfolio Credit Risk Management</u>	<u>84</u>
<u>Commercial Portfolio Credit Risk Management</u>	<u>103</u>
<u>Non-U.S. Portfolio</u>	<u>115</u>
<u>Provision for Credit Losses</u>	<u>119</u>
<u>Allowance for Credit Losses</u>	<u>119</u>
<u>Market Risk Management</u>	<u>124</u>
<u>Trading Risk Management</u>	<u>124</u>
<u>Interest Rate Risk Management for Nontrading Activities</u>	<u>127</u>
<u>Mortgage Banking Risk Management</u>	<u>132</u>
<u>Compliance Risk Management</u>	<u>132</u>
<u>Operational Risk Management</u>	<u>133</u>
<u>Complex Accounting Estimates</u>	<u>133</u>
<u>Glossary</u>	<u>139</u>
 <u>Item 3. Quantitative and Qualitative Disclosures about Market Risk</u>	 <u>142</u>
 <u>Item 4. Controls and Procedures</u>	 <u>142</u>
 <u>Part II. Other Information</u>	 <u>244</u>
 <u>Item 1. Legal Proceedings</u>	 <u>244</u>
 <u>Item 1A. Risk Factors</u>	 <u>244</u>
 <u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	 <u>244</u>
 <u>Item 6. Exhibits</u>	 <u>245</u>
 <u>Signature</u>	 <u>246</u>
 <u>Index to Exhibits</u>	 <u>247</u>

Table of Contents

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This report on Form 10-Q, the documents that it incorporates by reference and the documents into which it may be incorporated by reference may contain, and from time to time Bank of America Corporation (collectively with its subsidiaries, the Corporation) and its management may make, certain statements that constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements can be identified by the fact that they do not relate strictly to historical or current facts. Forward-looking statements often use words such as “expects,” “anticipates,” “believes,” “estimates,” “targets,” “intends,” “plans,” “goal” and other similar expressions, and future or conditional verbs such as “will,” “may,” “might,” “should,” “would” and “could.” The forward-looking statements may represent the current expectations, plans or forecasts of the Corporation regarding the Corporation's future results and revenues, and future business and economic conditions more generally, including statements concerning: the Federal Reserve's plans to purchase U.S. treasury bonds and agency mortgage-backed securities (MBS) and sell short-dated securities between October 2011 and June 2012; the expected closing of the Canada consumer card business in the fourth quarter of 2011; the Corporation's intention to exit its consumer card businesses in Europe; the planned schedule and details for implementation and completion of, and the expected impact from, Phase 1 and Phase 2 of Project New BAC, including expected personnel reductions and estimated expense reductions; the potential impact of the European Union (EU) financial relief plan, including on European banks, as well as any other European sovereign bailout proposals; the future favorable effects of the United Kingdom (U.K.) corporate income tax rate reductions and the effect on income tax expense of the possible additional U.K. corporate income tax rate reduction announced by the U.K. Treasury; the transformation of the Corporation's mortgage business, including the Corporation's intention to wind down its correspondent channel; the Corporation's expectation that it will maintain limited commercial paper exposure; the expected normalized levels of credits losses and noninterest expense; recent developments with regard to the agreement to resolve nearly all of the legacy Countrywide-issued first-lien non government-sponsored enterprise (GSE) residential mortgage-backed securitization repurchase exposures (the BNY Mellon Settlement); the impact of and costs associated with each of the agreements with The Bank of New York Mellon (as trustee for certain legacy Countrywide private-label securitization trusts), Assured Guaranty Ltd. and subsidiaries (Assured Guaranty), and each of the government-sponsored enterprises Fannie Mae (FNMA) and Freddie Mac (FHLMC) (collectively, the GSEs) to resolve bulk representations and warranties claims; the continually evolving behavior of the GSEs, and the Corporation's intention to monitor and update its processes related to these changing GSE behaviors; the adequacy of the liability for the remaining representations and warranties exposure to the GSEs and the future impact to earnings, including the impact on such estimated liability arising from the recent announcement by FNMA regarding mortgage rescissions, cancellations and claim denials; our expectation that mortgage-related assessment and waiver costs will remain elevated as additional loans are delayed in the foreclosure process and as the GSEs assert more aggressive criteria; the expected repurchase claims on the 2004-2008 loan vintages; the Corporation's belief that with the provision recorded in connection with the BNY Mellon Settlement, and the additional representations and warranties provisions recorded in the nine months ended September 30, 2011, the Corporation has provided for a substantial portion of its non-GSE representations and warranties exposure; the potential assertion and impact of additional claims not addressed by the BNY Mellon Settlement or any of the prior agreements entered into between the Corporation and the GSEs, monoline insurers and other investors; representations and warranties liabilities (also commonly referred to as reserves), and the estimated range of possible loss, expenses and repurchase claims and resolution of those claims, and any related servicing, securities, fraud, indemnity or other claims; the Corporation's intention to vigorously contest any requests for repurchase for which it concludes that a valid basis does not exist; future impact of complying with the terms of the consent orders with federal bank regulators regarding the foreclosure process and potential civil monetary penalties that may be levied in connection therewith; the impact of delays in connection with the Corporation's temporary halt of foreclosure proceedings in late 2010; the potential impact of changes in the Corporation's procedures and controls, as well as governmental, regulatory and judicial actions, on the timing of resuming foreclosure proceedings and foreclosure sales and on the collection of certain fees and expenses; negotiations to settle or any other resolution of various state and federal investigations into alleged irregularities in the

practices of residential mortgage originators and servicers, including the Corporation; the net recovery projections for credit default swaps with monoline financial guarantors; the impact on economic conditions and on the Corporation arising from any further changes to the credit rating or perceived creditworthiness of instruments issued, insured or guaranteed by the U.S. government, or of institutions, agencies or instrumentalities directly linked to the U.S. government; future payment protection insurance (PPI) claims in the U.K.; future risk-weighted assets and any mitigation efforts to reduce risk-weighted assets; credit trends and conditions, including credit losses, credit reserves, the allowance for loan and lease losses, charge-offs, delinquency, collection and bankruptcy trends, and nonperforming asset levels, including expected reductions in the allowance for loan and lease losses; sales and trading revenue; consumer and commercial service charges, including the impact of changes in the Corporation's overdraft policy and the Corporation's ability to mitigate a decline in revenues; liquidity; the Corporation's anticipation that it will continue to reduce its long-term debt as appropriate through 2013; capital levels determined by or established in accordance with accounting principles generally accepted in the United States of America (GAAP) and with the requirements of various regulatory agencies, including our ability to comply with any Basel capital requirements endorsed by U.S. regulators without raising additional capital and within any applicable regulatory timelines; the revenue impact of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act); the revenue impact and the impact on the value of our assets and liabilities resulting from, and any mitigation actions taken in response to, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Financial Reform Act), including the impact of the Durbin Amendment, the Volcker Rule, and activity of the Consumer Financial Protection Bureau; the risk retention rules and derivatives regulations; the Corporation's intention to comply with certain requirements relating to fraud prevention in debit card transactions pursuant to the final rule issued by the Federal Reserve

Table of Contents

under the Durbin Amendment; the Corporation's ability to substitute or make changes to certain over-the-counter (OTC) derivative contracts; run-off of loan portfolios; that it is the Corporation's objective to maintain high-quality credit ratings; the expected impacts of certain privately-negotiated exchange transactions, including allowing the retirement of certain long-term junior subordinated debt issued to the trust companies, increasing Tier 1 common capital and reducing dividends paid on preferred stock and interest expense on certain long-term junior subordinated debt, increasing interest expense associated with newly issued senior notes and being accretive to earnings per common share and slightly dilutive to earnings per share; the estimated range of possible loss and the impact of various legal proceedings discussed in "Litigation and Regulatory Matters" in Note 11 - Commitments and Contingencies to the Consolidated Financial Statements; the number of delayed foreclosure sales and the resulting financial impact and other similar matters; and other matters relating to the Corporation and the securities that it may offer from time to time. The foregoing is not an exclusive list of all forward-looking statements the Corporation makes. These statements are not guarantees of future results or performance and involve certain risks, uncertainties and assumptions that are difficult to predict and often are beyond the Corporation's control. Actual outcomes and results may differ materially from those expressed in, or implied by, the Corporation's forward-looking statements.

You should not place undue reliance on any forward-looking statement and should consider the following uncertainties and risks, as well as the risks and uncertainties more fully discussed elsewhere in this report, under Item 1A. "Risk Factors" of the Corporation's 2010 Annual Report on Form 10-K and the Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011, and in any of the Corporation's subsequent Securities and Exchange Commission (SEC) filings: the Corporation's ability to implement, manage and realize the anticipated benefits, revenue increases and cost savings from Project New BAC; the Corporation's timing and determinations regarding any potential revised comprehensive capital plan submission and the Federal Reserve's response; the Corporation's intent to build capital through retaining earnings, reducing legacy asset portfolios and implementing other non-dilutive capital related initiatives; the accuracy and variability of estimates and assumptions in determining the expected total cost of the BNY Mellon Settlement to the Corporation; the accuracy and variability of estimates and assumptions in determining the estimated liability and/or estimated range of possible loss for representations and warranties exposures to the GSEs, monolines and private-label and other investors; the accuracy and the variability of estimates and assumptions in determining the portion of the Corporation's repurchase obligations for residential mortgage obligations sold by the Corporation and its affiliates to investors that has been paid or reserved after giving effect to the BNY Mellon Settlement and the charges in the nine months ended September 30, 2011; the possibility that objections to the approval of the BNY Mellon Settlement, including objections by parties that have already filed notices of intent to object or motions to intervene, will delay or prevent receipt of final court approval; whether the conditions to the BNY Mellon Settlement will be satisfied, including the receipt of final court approval and private letter rulings from the IRS and other tax rulings and opinions; the Corporation and certain of its affiliates' ability to comply with the servicing and documentation obligations under the BNY Mellon Settlement; the potential assertion and impact of additional claims not addressed by the BNY Mellon Settlement or any of the prior agreements entered into between the Corporation and the GSEs, monoline insurers and other investors; the accuracy and variability of estimates and assumptions in determining the expected value of the loss-sharing reinsurance arrangement relating to the agreement with Assured Guaranty and the total cost of the agreement to the Corporation; the Corporation's resolution of certain representations and warranties obligations with the GSEs and our ability to resolve the GSEs' remaining claims; the Corporation's ability to resolve its representations and warranties obligations, and any related servicing, securities, fraud, indemnity or other claims with monolines, and private-label investors and other investors, including those monolines and investors from whom the Corporation has not yet received claims or with whom it has not yet reached any resolutions; failure to satisfy its obligations as servicer in the residential mortgage securitization process; the adequacy of the liability and/or the estimated range of possible loss for the representations and warranties exposures to the GSEs, monolines and private-label and other investors; the foreclosure review and assessment process, the effectiveness of the Corporation's response and any governmental findings or penalties or private third-party claims asserted in connection with these foreclosure matters; the ability to achieve resolution in negotiations with law enforcement authorities and federal agencies, including the U.S. Department of Justice (DOJ)

and U.S. Department of Housing and Urban Development (HUD), involving mortgage servicing practices, including the timing and any settlement terms; the adequacy of the reserve for future PPI claims in the U.K.; the risk of a subsequent credit rating downgrade of the U.S. government; negative economic conditions generally including continued weakness in the U.S. housing market, high unemployment in the U.S., as well as economic challenges in many non-U.S. countries in which the Corporation operates; the Corporation's mortgage modification policies and related results; the level and volatility of the capital markets, interest rates, currency values and other market indices; changes in consumer, investor and counterparty confidence in, and the related impact on, financial markets and institutions, including the Corporation as well as its business partners; the Corporation's credit ratings and the credit ratings of its securitizations, including the risk that the Corporation or its securities will be the subject of additional or further credit rating downgrades in addition to the downgrade by Moody's Investors Service, Inc. (Moody's) in the third quarter of 2011; the Corporation's ability to substitute or make changes to certain OTC derivative contracts, including as a result of certain limitations such as counterparty willingness, regulatory limitations on naming Bank of America, N.A. as the new counterparty, and the type or amount of collateral required; the impact resulting from international and domestic sovereign credit uncertainties, including the effectiveness of the EU financial relief plan; the timing and amount of any potential dividend increase; estimates of the fair value of certain of the Corporation's assets and liabilities; legislative and regulatory actions in the U.S. (including the impact of the Financial Reform Act, the Electronic Fund Transfer Act, the CARD Act and related regulations and interpretations) and internationally; the identification and effectiveness of any initiatives to mitigate the negative impact of the Financial Reform Act; the impact of litigation and regulatory investigations, including costs, expenses, settlements and judgments as well as any collateral effects on our ability to do business and access the capital markets; various monetary, tax and fiscal policies and regulations of the U.S. and non-U.S. governments;

Table of Contents

changes in accounting standards, rules and interpretations, inaccurate estimates or assumptions in the application of accounting policies, including in determining reserves, and of applicable guidance regarding goodwill accounting and the impact on the Corporation's financial statements; increased globalization of the financial services industry and competition with other U.S. and international financial institutions; adequacy of the Corporation's risk management framework; the Corporation's ability to attract new employees and retain and motivate existing employees; technology changes instituted by the Corporation, its counterparties or competitors; mergers and acquisitions and their integration into the Corporation, including the Corporation's ability to realize the benefits and cost savings from the Merrill Lynch & Co., Inc. (Merrill Lynch) and Countrywide Financial Corporation (Countrywide) acquisitions; the Corporation's reputation, including the effects of continuing intense public and regulatory scrutiny of the Corporation and the financial services industry; the effects of any unauthorized disclosures of our or our customers' private or confidential information and any negative publicity directed toward the Corporation; and decisions to downsize, sell or close units or otherwise change the business mix of the Corporation.

Forward-looking statements speak only as of the date they are made, and the Corporation undertakes no obligation to update any forward-looking statement to reflect the impact of circumstances or events that arise after the date the forward-looking statement was made.

Notes to the Consolidated Financial Statements referred to in the Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) are incorporated by reference into the MD&A. Certain prior period amounts have been reclassified to conform to current period presentation. Throughout the MD&A, the Corporation uses certain acronyms and abbreviations which are defined in the Glossary.

Executive Summary

Business Overview

The Corporation is a Delaware corporation, a bank holding company and a financial holding company. When used in this report, "the Corporation" may refer to the Corporation individually, the Corporation and its subsidiaries, or certain of the Corporation's subsidiaries or affiliates. Our principal executive offices are located in the Bank of America Corporate Center in Charlotte, North Carolina. Through our banking and various nonbanking subsidiaries throughout the United States and in certain international markets, we provide a diversified range of banking and nonbanking financial services and products through six business segments: Deposits, Card Services (formerly Global Card Services), Consumer Real Estate Services (CRES), Global Commercial Banking, Global Banking & Markets (GBAM) and Global Wealth & Investment Management (GWIM), with the remaining operations recorded in All Other. At September 30, 2011, the Corporation had \$2.2 trillion in assets and approximately 290,000 full-time equivalent employees.

As of September 30, 2011, we operated in all 50 states, the District of Columbia and more than 40 countries. Our retail banking footprint covers approximately 80 percent of the U.S. population and in the U.S., we serve 58 million consumer and small business relationships with approximately 5,700 banking centers, 17,750 ATMs, nationwide call centers, and leading online and mobile banking platforms. We offer industry-leading support to approximately four million small business owners. We are a global leader in corporate and investment banking and trading across a broad range of asset classes serving corporations, governments, institutions and individuals around the world.

Table of Contents

Table 1 provides selected consolidated financial data for the three and nine months ended September 30, 2011 and 2010 and at September 30, 2011 and December 31, 2010.

Table 1

Selected Financial Data

	Three Months Ended		Nine Months Ended
	September 30		September 30
(Dollars in millions, except per share information)	2011	2010	