BANK OF AMERICA CORP /DE/
Form 8-K
December 05, 2017

As filed with the Securities and Exchange Commission on December 5, 2017

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934
Date of Report (Date of earliest event reported):
December 5, 2017

BANK OF AMERICA CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	1-6523	56-0906609
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

100 North Tryon Street
Charlotte, North Carolina 28255
(Address of principal executive offices)

(704) 386-5681
(Registrant's telephone number, including area code)
Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2). o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

ITEM 8.01. Other Events.

On December 5, 2017, Bank of America Corporation's (the "Corporation") Board of Directors authorized the repurchase of $5 billion of the Corporation's common stock by June 30, 2018. This authorization is in addition to the previously announced authorization to repurchase $12 billion in common stock from July 1, 2017 through June 30, 2018, plus repurchases to offset shares awarded under equity-based compensation plans during the same period, estimated to be approximately $0.9 billion.

The repurchase authorizations cover both common stock and warrants. The timing and exact amount of the Corporation's repurchases will be subject to various factors, including the Corporation's capital position, liquidity, financial performance and alternative uses of capital, stock trading price, and general market conditions, and may be suspended at any time. The repurchases may be effected through open market purchases or privately negotiated transactions, including Rule 10b5-1 plans.

A copy of the news release announcing the authorization is attached hereto as Exhibit 99.1 and incorporated by reference into this Item 8.01.

ITEM 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibit is filed herewith.

EXHIBIT NO.	DESCRIPTION OF EXHIBIT
99.1	News Release dated December 5, 2017

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BANK OF AMERICA CORPORATION

By: /s/ Ross E. Jeffries, Jr.
Ross E. Jeffries, Jr.
Deputy General Counsel and Corporate Secretary

Dated: December 5, 2017

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GIN-RIGHT: 0pt" align="left">The Offer to Purchase and Item 11 of the Schedule TO, to the extent Item 11 incorporates by reference the information contained in the Offer to Purchase, are hereby amended and supplemented as set forth below:

The information set forth in Section 11. "Purpose of the Offer; Plans for AFOP; Other Matters" is hereby amended and supplemented by replacing the final paragraph of section (f) Recent Developments Relating to AFOP as follows:

"On May 26, 2016, solely to avoid the costs, risks and uncertainties inherent in litigation, AFOP entered into a memorandum of understanding with the plaintiffs and other named defendants, including the members of the AFOP Board, Corning and the Purchaser, regarding the settlement of the Bushansky, Luck, Doerr and Khaki actions ("Lawsuits").

Under the terms of the memorandum of understanding, AFOP, the other named defendants and the plaintiffs have agreed, among other things, to settle the Lawsuits and all related claims subject to approval of the Court. If the Court approves the settlement contemplated in the memorandum of understanding, the asserted claims will be released and the Lawsuits will be dismissed with prejudice. Although AFOP believes that no further supplemental disclosure is required under applicable laws, as a result of pendency and prosecution of the Lawsuits, AFOP has agreed to make available additional information to its stockholders in this Amendment No. 5. Additionally, in connection with the settlement, plaintiffs intend to seek, and the defendants have agreed to pay, an award of attorneys' fees and expenses in an amount to be negotiated by the parties or determined by the Court, if no agreement is reached.

If the settlement is finally approved by the Court, it is anticipated that the settlement will resolve and release all claims in all actions that were or could have been brought challenging any aspect of the proposed merger, the Merger Agreement, and any disclosure made in connection therewith. There can be no assurance that the parties will ultimately enter into a stipulation of settlement or that the Court will approve the settlement even if the parties were to enter into such stipulation. In such event, the proposed settlement as contemplated by the memorandum of understanding may be terminated. The settlement will not affect the merger consideration to be paid to stockholders of AFOP in connection with the proposed merger.

AFOP and the members of the AFOP Board have vigorously denied, and continue vigorously to deny, that they have committed or aided and abetted in the commission of any violation of law or engaged in any of the wrongful acts that were or could have been alleged in the Lawsuits, and expressly maintain that, to the extent applicable, they diligently and scrupulously complied with their fiduciary and other legal duties and are entering into the contemplated settlement solely to eliminate the burden and expense of further litigation, to put the claims that were or could have

been asserted to rest, and to avoid any possible delay to the closing of the merger that might arise from further litigation. Nothing in this Amendment No. 5, the memorandum of understanding or any stipulation of settlement shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the disclosures set forth herein.

The outcome of the above litigation cannot be predicted with certainty; however, AFOP, Corning and the Purchaser believe the Lawsuits are without merit. A preliminary injunction could delay or jeopardize the completion of the transactions, and an adverse judgment granting permanent injunctive relief could indefinitely enjoin completion of the transactions."

The subsection entitled "Litigation" of Section 18. "Miscellaneous" is hereby amended and supplemented by replacing the final paragraph as follows:

"On May 26, 2016, solely to avoid the costs, risks and uncertainties inherent in litigation, AFOP entered into a memorandum of understanding with the plaintiffs and other named defendants, including the members of the AFOP Board, Corning and the Purchaser, regarding the settlement of the Bushansky, Luck, Doerr and Khaki actions ("Lawsuits").

Under the terms of the memorandum of understanding, AFOP, the other named defendants and the plaintiffs have agreed, among other things, to settle the Lawsuits and all related claims subject to approval of the Court. If the Court approves the settlement contemplated in the memorandum of understanding, the asserted claims will be released and the Lawsuits will be dismissed with prejudice. Although AFOP believes that no further supplemental disclosure is required under applicable laws, as a result of pendency and prosecution of the Lawsuits, AFOP has agreed to make available additional information to its stockholders in this Amendment No. 5. Additionally, in connection with the settlement, plaintiffs intend to seek, and the defendants have agreed to pay, an award of attorneys' fees and expenses in an amount to be negotiated by the parties or determined by the Court, if no agreement is reached.

If the settlement is finally approved by the Court, it is anticipated that the settlement will resolve and release all claims in all actions that were or could have been brought challenging any aspect of the proposed merger, the Merger Agreement, and any disclosure made in connection therewith. There can be no assurance that the parties will ultimately enter into a stipulation of settlement or that the Court will approve the settlement even if the parties were to enter into such stipulation. In such event, the proposed settlement as contemplated by the memorandum of understanding may be terminated. The settlement will not affect the merger consideration to be paid to stockholders of AFOP in connection with the proposed merger.

AFOP and the members of the AFOP Board have vigorously denied, and continue vigorously to deny, that they have committed or aided and abetted in the commission of any violation of law or engaged in any of the wrongful acts that were or could have been alleged in the Lawsuits, and expressly maintain that, to the extent applicable, they diligently and scrupulously complied with their fiduciary and other legal duties and are entering into the contemplated settlement solely to eliminate the burden and expense of further litigation, to put the claims that were or could have been asserted to rest, and to avoid any possible delay to the closing of the merger that might arise from further litigation. Nothing in this Amendment No. 5, the memorandum of understanding or any stipulation of settlement shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the disclosures set forth herein.

The outcome of the above litigation cannot be predicted with certainty; however, AFOP, Corning and the Purchaser believe the Lawsuits are without merit. A preliminary injunction could delay or jeopardize the completion of the transactions, and an adverse judgment granting permanent injunctive relief could indefinitely enjoin completion of the transactions."

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: May 26, 2016

APRICOT MERGER COMPANY

By: /s/ William L. Juan
Name: William L. Juan
Title: Secretary

CORNING INCORPORATED

By: /s/ Linda E. Jolly
Name: Linda E. Jolly
Title: Vice President and Corporate Secretary