

## FORM OF GUARANTEE

This Guarantee is made on 19 July 2024 (the "**Guarantee**") by BANK OF AMERICA CORPORATION, a corporation incorporated under the laws of the State of Delaware ("**BAC**").

### WHEREAS:

Merrill Lynch B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under Dutch law, having its official seat (*statutaire zetel*) in Amsterdam, The Netherlands and having its registered office at Amstelplein 1, Rembrandt Tower, 27th Floor, 1096 HA Amsterdam, The Netherlands, registered with the Trade Register of the Dutch Chamber of Commerce under number 56457103 (the "**Issuer**") may from time to time issue notes ("**Notes**") (up to a maximum aggregate principal/nominal amount of €25,000,000,000 (or its equivalent in any currency) outstanding at any one time, from time to time, under the Programme (as defined below)), warrants ("**Warrants**") and certificates ("**Certificates**" and together with the Notes and Warrants, the "**Guaranteed Instruments**"), in each case under the Bank of America Corporation and Merrill Lynch B.V. Note, Warrant and Certificate Programme (the "**Programme**") and pursuant to the English and French Law Agency Agreement dated as of 19 July 2024 (as the same may be amended, supplemented and/or restated from time to time in accordance with the terms thereof, the "**English and French Law Agency Agreement**") among the Issuer, BAC and the Agents (as defined therein) and, with respect to Notes governed by English law, with the benefit of a Deed of Covenant dated 19 July 2024 executed by the Issuer (the "**Notes Deed of Covenant**") and with respect to the Warrants governed by English law and the Certificates governed by English law, with the benefit of a W&C Instruments Deed of Covenant dated 19 July 2024 executed by the Issuer (the "**W&C Instruments Deed of Covenant**").

**NOW, THEREFORE**, BAC, as guarantor, hereby agrees as follows:

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, BAC hereby irrevocably, fully and unconditionally guarantees, as primary obligor and not merely as surety, on an unsecured basis, to the Holders (as defined below) of Guaranteed Instruments issued by the Issuer from time to time on or after the date hereof, under the terms of the English and French Law Agency Agreement and, with respect to English law governed Notes, the Notes Deed of Covenant, and with respect to the English law governed Warrants and the English law governed Certificates, the W&C Instruments Deed of Covenant, the due and punctual payment (whether at stated maturity, upon redemption, repayment or acceleration, or otherwise, after giving effect to any applicable grace period) of (a) the principal of (and premium, if any, on) and any interest and all other amounts due and payable by the Issuer as obligor in respect of each such Guaranteed Instrument (other than Physical Delivery Instruments) and (b) the Guaranteed Cash Settlement Amount in respect of each such Guaranteed Instrument which is a Physical Delivery Instrument, in each case pursuant to and in accordance with the Conditions (as defined in the English and French Law Agency Agreement) of such Guaranteed Instruments. Upon failure by the Issuer to punctually pay any such amount or deliver any Entitlement in respect of any Physical Delivery Instrument when due, BAC shall forthwith on demand pay the amount not so paid or the Guaranteed Cash Settlement Amount in respect of any Entitlement not so delivered. In the case of Physical Delivery Instruments, the Guarantor is only obligated to make the payment of the Guaranteed Cash Settlement Amount in lieu of delivering any Entitlement. This Guarantee is one of payment and not of collection.

"**Holders**" means (a) in respect of Guaranteed Instruments (other than French Guaranteed Instruments (as defined below)) issued by the Issuer, the person in whose name a registered Guaranteed Instrument is registered and (b) in respect of French Guaranteed Instruments (as defined below), the person whose name appears in the account of the relevant Euroclear France Accountholder (as defined below) as being entitled to such French Guaranteed Instruments. "**Euroclear France Accountholder**" means any authorized financial intermediary institution entitled to hold accounts, directly or indirectly, on behalf of its customers with Euroclear France, and including Euroclear Bank SA/NV and Clearstream Banking, S.A. "**French Guaranteed Instruments**" means the Guaranteed Instruments governed by French law which are issued by the Issuer pursuant to the English and French Law Agency Agreement and held through Euroclear France.

Any Guaranteed Instruments issued on or after the date on which BAC has granted a subsequent guarantee of such Guaranteed Instruments (in respect of which such Guaranteed Instruments will have the benefit) shall not have the benefit of this Guarantee (save (i) in relation to any Tranche of Guaranteed Instruments which are expressed to be consolidated and form a single series with any Tranche(s) of Guaranteed Instruments which have

the benefit of this Guarantee, and/or (ii) if expressly so provided in any such subsequent guarantee and/or applicable Conditions (including, without limitation, the applicable Issue Terms) of the Guaranteed Instruments).

**Notwithstanding that under the terms of the Guaranteed Instruments either (i) the Issuer has the right (whether or not exercised) to vary the type of consideration due and payable or deliverable to a Holder or (ii) the Issuer is obligated to deliver non-cash consideration to Holders when the same shall become due and deliverable, BAC shall at all times be obligated only to pay an amount in cash equal to the Guaranteed Cash Settlement Amount (calculated pursuant to the terms of, or as specified in, the Conditions and the applicable Issue Terms, prepared with respect to such Guaranteed Instruments). Any payment of the Guaranteed Cash Settlement Amount in lieu of delivering any Entitlement shall constitute a complete discharge of BAC's obligations in respect of such Guaranteed Instruments.**

The obligations of BAC hereunder are unconditional, absolute and irrevocable and, without limiting the generality of the foregoing, will not be released, discharged, or otherwise affected or impaired by: (a) any extension, renewal, settlement, compromise, waiver, release, or moratorium in respect of any obligation of the Issuer under any Guaranteed Instrument, in whole or in part, by operation of law or otherwise; (b) any waiver or consent, modification or amendment of or supplement to any Guaranteed Instrument; (c) any change in the corporate existence, structure or ownership of the Issuer (whether by way of consolidation, amalgamation, merger, transfer, sale, lease, conveyance or otherwise), or any insolvency, bankruptcy, receivership, reorganization or other similar proceeding affecting the Issuer or its assets or any resulting release or discharge of any obligation of the Issuer contained in any Guaranteed Instrument; (d) the existence of any claim, counterclaim, set off, recoupment or other rights or defenses which BAC may have at any time against the Issuer or any other person or entity, whether in connection with the Guaranteed Instruments or any unrelated transactions, provided that nothing herein prevents the assertion of any such claim by separate suit or compulsory counterclaim; (e) the absence of any action to enforce any of the Issuer's obligations with respect to any Guaranteed Instrument; (f) any invalidity, irregularity or unenforceability relating to or against the Issuer for any reason of any Guaranteed Instrument (except as may result from any applicable statute of limitations), or any provision of applicable law or regulation purporting to prohibit the payment by the Issuer of the principal of or interest on any Guaranteed Instrument; (g) the rendering of any judgment against the Issuer or any action to enforce the same; or (h) any act or omission to act or delay of any kind by the Issuer or any other person or entity or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of or defense to BAC's obligations hereunder (other than the indefeasible payment in full of all of BAC's obligations hereunder).

BAC's payment obligations under this Guarantee with respect to any Guaranteed Instruments will remain in full force and effect until the principal of (and premium, if any, on) and any interest and all other amounts due and payable or non-cash consideration deliverable by the Issuer on such Guaranteed Instruments has been paid or delivered in full. If at any time any due and punctual payment of the principal of (and premium, if any, on) or any interest or other amount payable or Entitlement deliverable by the Issuer on any Guaranteed Instrument is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy, receivership or reorganization of the Issuer or otherwise, BAC's payment obligations hereunder with respect to such Guaranteed Instruments will be reinstated as though such payment had been due but not made at such time.

BAC hereby irrevocably waives diligence; acceptance; presentment; demand; protest; notice of protest, notice of acceleration; notice of dishonor; any notice not provided for herein; filing of claims with any court in the event of insolvency or bankruptcy of the Issuer; and any right to require a proceeding first against the Issuer or any other entity or person.

Upon making any payment with respect to any payment or non-cash delivery obligation of the Issuer under this Guarantee, BAC shall be subrogated to the rights of the payee against the Issuer with respect to such obligation, provided that BAC may not enforce any right of subrogation with respect to such payment so long as any amount payable or deliverable by the Issuer under any Guaranteed Instrument remains unpaid or not delivered.

If acceleration of the time for payment of any amount payable or non-cash consideration deliverable by the Issuer on the Notes guaranteed hereunder is stayed upon the insolvency, bankruptcy, receivership or reorganization of the Issuer, BAC shall forthwith on demand by the Holders pay all such amounts or the Guaranteed Cash Settlement Amount, as applicable, in respect of any such Notes, notwithstanding any such stay.

Notwithstanding anything to the contrary in this Guarantee, BAC, and by its acceptance of a Guaranteed Instrument, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee not constitute

a fraudulent conveyance under applicable fraudulent conveyance, fraudulent transfer or similar provisions of the United States Bankruptcy Code or any comparable provision of U.S. state law. To effectuate that intention, the Holders and BAC hereby irrevocably agree that the obligations of BAC under the Guarantee are limited to the maximum amount that would not render BAC's obligations subject to avoidance under applicable fraudulent conveyance, fraudulent transfer or similar provisions of the United States Bankruptcy Code or any comparable provision of U.S. state law.

Any demand upon BAC hereunder with respect to this Guarantee shall be made by the relevant Holder by the giving of written notice of such demand to BAC at Bank of America Corporation, Bank of America Corporate Center, Attention: Corporate Treasury - Global Funding Transaction Management, NC1-007-06-10, 100 North Tryon Street, Charlotte, North Carolina 28255-0065, U.S.A., with a copy sent to BAC at Bank of America Corporation, Legal Department, Attention: General Counsel, NC1-027-18-05, 150 North College Street, Charlotte, North Carolina 28255- 0065, U.S.A.; provided, however, that delay in making such demand shall in no event affect BAC's obligations under this Guarantee.

BAC hereby represents and warrants to the Holders of the Guaranteed Instruments that this Guarantee constitutes the valid and binding obligation of BAC and is enforceable in accordance with its terms.

This Guarantee shall not be valid or become obligatory for any purpose with respect to (a) any Guaranteed Instrument (except French Guaranteed Instruments) until the Global Note, the Individual Note Certificate, the Global Certificate, the individual certificate, the Global Warrant or the individual warrant certificate, as applicable, shall have been completed, authenticated and delivered as provided in the English and French Law Agency Agreement or (b) any French Guaranteed Instrument until an Accounting Letter (*Lettre Comptable*) in an aggregate nominal amount equal to that of the Tranche to be issued is duly signed by the Issuer or the French Paying Agent or French W&C Instrument Paying Agent, as applicable, on behalf of the Issuer and delivered through Euroclear France on the applicable Issue Date.

Terms and expressions defined in the applicable Conditions and English and French Law Agency Agreement shall have the same meanings when used in this Guarantee, except where the context otherwise requires.

This Guarantee may be terminated at any time by written notice by BAC to the Issuer, and shall be effective upon receipt of such notice by the Issuer or such later date as may be specified in such notice; provided, however, that notwithstanding any such termination, this Guarantee shall continue in full force and effect with respect to any payment or, subject as provided above, non-cash delivery obligations of the Issuer under any Guaranteed Instruments covered by this Guarantee already in issue at the date of such termination being effective.

This Guarantee will terminate upon the merger of the Issuer with and into BAC.

This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed in the State of New York.

The Guaranteed Instruments (other than French Guaranteed Instruments) are governed by, and construed in accordance with, English law, and the Issuer has submitted to the exclusive jurisdiction of the English courts for the purposes of determining any legal action or proceeding relating thereto. BAC has not submitted to the jurisdiction of the English courts for any such purpose, and any legal action or proceedings arising out of or relating to this Guarantee with respect to the Guaranteed Instruments (other than French Guaranteed Instruments) shall be subject to the exclusive jurisdiction of the courts of the State of New York or the courts of the United States of America located in the Borough of Manhattan in the City and State of New York. The French Guaranteed Instruments are governed by, and construed in accordance with, French law, and the Issuer has submitted to the exclusive jurisdiction of any competent court located within the jurisdiction of the *Cour d'Appel* of Paris for the purposes of determining any legal action or proceeding relating thereto. BAC has not submitted to the jurisdiction of the *Cour d'Appel* of Paris for any such purpose, and any legal action or proceedings arising out of or relating to this Guarantee with respect to the French Guaranteed Instruments shall be subject to the exclusive jurisdiction of the courts of the State of New York or the courts of the United States of America located in the Borough of Manhattan in the City and State of New York.

This Guarantee shall expire and is no longer effective once all amounts payable or non-cash consideration deliverable, as the case may be, on or in respect of the Guaranteed Instruments have been satisfied.

[Signature Page Follows]

IN WITNESS WHEREOF, BAC has caused this Guarantee to be executed in its corporate name by its duly authorized representative.

BANK OF AMERICA CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: