Bank of America _____

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Mr. Lawrence W. Smith
Director – Technical Application and Impleme:
Financial Accounting Standards Board
401 Merritt 7
P. O. Box 5116
Norwalk, CT 06856-5116

Letter of Comment No: 13
File Reference: FSPFAS13-A

Date Received:

Re: Comments on Proposed FSP 13-a

Dear Mr. Smith

Bank of America Corporation appreciates the opportunity to comment on the proposed FASB Staff Position (FSP) FAS 13-a, Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leverage Lease Transaction, (the proposed FSP) dated July 14, 2005. Bank of America Corporation, with approximately \$1.25 trillion in total assets, provides a diverse range of financial services and products throughout the United States and in selected international markets. Bank of America Corporation's Global Business and Financial Services business provides leasing solutions to small business, middlemarket and large corporations in the United States and internationally, offering expertise in the municipal, corporate aircraft, healthcare and vendor markets.

The proposed FSP will amend FAS 13, which was issued in 1976 causing a significant change to the interpretation of FAS 13 and industry practice from what was generally accepted for the past 29 years. We are concerned about how this change in a long standing accounting standard will be received by users of financial statements. As presently drafted, the implementation of the proposed FSP will result in a cumulative adjustment to net income below the line. However, a majority of the adjustment will be recognized back into operating income in future periods over the remaining lease terms. We believe that this proposed FSP will simply confuse users of financial statements and will not add additional transparency. We are also concerned that abruptly changing long standing GAAP will undermine reader confidence in financial statements and will have the unintended consequence of giving the perception that GAAP is nothing more than "shifting sands." However, if issued, we have the following comments regarding the proposed FSP's scope, reevaluation of the leveraged lease classification, recalculation methodology, and the effective date.



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Scope

We agree with the Board's conclusions that the scope should only apply to transactions classified as leveraged leases under FAS 13. However, we also believe the scope should be expanded to include those direct financing leases that were previously recorded as leveraged leases. Therefore, if an estimated tax settlement resulted in a reclassification from a leveraged lease to a direct financing lease, and that lease subsequently met the classification of a leveraged lease upon settlement, reclassification should be allowed under the accounting literature.

Reevaluation of Leverage Lease Classification

We do not agree with the revised amendment to paragraph 46 of FAS 13, which requires that any revision of an important assumption requiring a recalculation of a leveraged lease would also require the lessor to reevaluate the classification criteria of the lease. Typically under GAAP, classification is not reevaluated unless there have been specific modifications to the legal terms of the underlying transaction. We do not support the notion that a transaction structured as a leveraged lease, and thus meeting the leveraged lease classification under FAS 13 at inception, should be reclassified when the underlying transaction structure and agreements have not been modified. We believe there should be consistent application for all lease transactions with regard to reevaluating lease classification, and therefore, believe paragraph 9 of FAS 13 should be applicable to all leases, including leveraged leases. Accordingly, we propose that the leveraged lease classification should not be reevaluated unless there has been a modification of the terms of the lease, consistent with the requirements for other transactions within the scope of FAS 13.

Recalculation Methodology

We question whether or not it is appropriate to include interest and penalties in the recalculation if other economic components of the leveraged lease transactions, such as funding costs, overhead costs, etc., are not currently included. Interest and penalties are not directly associated with a lease's status as a leveraged lease, but rather arise from a position claimed on a tax return. The tax position on a leveraged lease is often viewed as a borrowing from the U.S. Treasury, which may result in interest and penalties. We believe the costs of this "borrowing" should be excluded from the net income from the leveraged lease, consistent with excluding the benefit of the use of the borrowed amount.

In addition, we believe that applying interest and penalties will require significant effort and judgment, as settlements with the Internal Revenue Service (the Service) often pertain to several issues simultaneously, and the assessment of interest and penalties by the Service is not assigned to specific matters included in the settlement, which further supports excluding interest and penalties from the recalculation. However, to the extent interest and penalties remain in the recalculation, we would suggest additional clarity in the proposed FSP on how to apply each in the recalculation in those situations where they are not individually assigned to a specific matter.

Further, we note the wording in paragraphs 9 and 11 of the proposed FSP, "The gain or loss recognized (from the recalculation) shall be included in income from continuing operations

before income taxes in the same line items used when leveraged lease income is recognized." We believe that this statement should be further clarified to note that the gain or loss is the pretax gain or loss, so that it is consistent with accounting under paragraph 46 of FAS 13, and the tax effect of the gain or loss is reported as a component of income tax expense. If interest and penalties remain in the recalculation methodology of the final FSP, it should be made clear that they should be included in the leveraged lease pretax income or within income tax expense, consistent with a company's policy decision for reporting income-tax-related interest and penalties, in accordance with paragraph 148 of FASB Statement No. 109, Accounting for Income Taxes.

Uncertain Tax Positions

Paragraph 12 of the proposed FSP requires that the estimated tax cash flows reflected in the calculation be based on the guidance in FASB's exposure draft Proposed Interpretation Accounting for Uncertain Tax Positions, an interpretation of FASB Statement No. 109 (the proposed FAS 109 Interpretation). The proposed FAS 109 Interpretation would require the lessor to determine whether the tax position reflected in its tax return is probable of being sustained on its technical merits upon audit, and if so, the lessor's calculation should include the best estimate of the amount that ultimately would be sustained. Yet, it has been noted that the FASB generally believes that as the difference between the best estimate amount and the as-filed amount in the tax return increases, the assertion that the tax position is probable based on its technical merits would be questioned.

We do not agree with the Board's conclusion and will provide our comments in our response letter on the proposed FAS 109 Interpretation. However, to the extent the proposed FAS 109 Interpretation is issued as presently drafted, we believe several questions arise in regards to the implementation of the proposed FSP. For instance, what would be the appropriate accounting when a company has determined that it is probable that it will retain 50 percent of the as-filed tax benefit? Would the 50 percent estimate call into question that the tax position is probable of being sustained based solely on the technical merits? The situation could be that in order to avoid the "hazards" of litigation, a company may expect to settle with the Service and retain 50 percent of the as-filed tax benefit, even though the company believes that it is probable that it would have retained a higher tax benefit if litigated in the tax courts. Furthermore, suppose that the company has a "should" opinion from tax counsel or legal precedent from similar positions where the analogy may be appropriate. We believe that under the proposed FSP the two alternatives would be to either record the best estimate, i.e., 50 percent of the as-filed tax benefit, or record no tax benefit. To the extent no tax benefit is recorded and the company does not settle with the Service nor receive any additional information to change its initial position regarding probability, upon adoption of the proposed FSP, the company would record a below-the-line cumulative adjustment. Then upon actual settlement, any benefit received would be recorded above-the-line in operations. We seriously question the accounting in this example, as it clearly does not provide transparency about the underlying leveraged lease transaction(s). Therefore, we believe further clarity should be provided in the proposed FSP as well as examples on how paragraph 9 in the proposed FAS 109 Interpretation should be applied in practice in order to avoid diversity in practice upon issuance of the proposed FSP.

Effective Date

Based on the significant change in accounting under the proposed FSP, the fact that the Service intends to issue but has not yet issued settlement guidelines with respect to transactions described in its Notice 2005-13, and the interaction with FASB's proposed FAS 109 Interpretation, we believe the proposed FSP should be delayed at least one year. Accordingly, the FSP would be effective as of the end of the first fiscal year ending after December 15, 2006 (December 31, 2006 for calendar—year-end companies).

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In summary, Bank of America Corporation does not support the proposed FSP. If issued, we agree with the scope of the proposed FSP, but disagree with the present requirement to reevaluate leveraged lease classification upon each recalculation and the inclusion of interest and penalties in the recalculation. We believe that further clarification is needed on applying interest and penalties in the recalculation, if that provision is retained. Additionally, we believe clarification should be provide on how the proposed FSP interacts with the proposed FAS 109 Interpretation on uncertain tax positions. We also believe that the complexity of applying the provisions of this standard should be considered in determining the effective date of the final FSP.

We welcome the opportunity to discuss our comments with you further. If you have any questions or would like to discuss our comments in more detail, please contact either Randy Shearer at (704) 388-8433 or me at (704) 387-4997.

Sincerely,

John M. James

cc: Neil Cotty, Chief Accounting Officer

Randy Shearer, Director of Financial Reporting and Accounting Policy