

November 21, 2005

Mr. Lawrence W. Smith
Director – Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5166

Re: Proposed FASB Staff Position No. FAS 133-a, *Accounting for Unrealized Gains (Losses) Relating to Derivative Instruments Measured at Fair Value under Statement 133* (the FSP)

Dear Mr. Smith:

We welcome the opportunity to comment on the above-referenced FSP. Bank of America Corporation provides a diverse range of financial services and products throughout the United States and in selected international markets, and is the second largest U.S. bank in terms of total assets. We routinely enter into derivative instruments for risk management purposes and on behalf of customers.

We support issuance of the proposed FSP, which provides a minimum reliability threshold for initial gain or loss recognition that is aligned with the measurement attributes set forth in the working draft of the proposed FASB Statement, *Fair Value Measurements* (the Working Draft). However, as discussed in more detail below, we believe that certain of the proposed disclosures are not sufficiently meaningful to justify the implementation costs. In addition, we believe that the provisions of the FSP should be applied on a prospective basis.

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Disclosures

The proposed FSP provides broad new disclosure requirements that are designed to enable users of the financial statements to evaluate the financial effects of derivative transactions. Specifically, paragraph 6(a) of the proposed FSP requires that an entity disclose “gross unrealized gains and losses at initial recognition of a derivative instrument recognized in income during the current period.” Paragraph 6(b) requires that an entity disclose “gross unrealized gains and losses at initial recognition of a derivative instrument that are deferred in the statement of financial position, and a reconciliation of the beginning and ending deferred balance(s) during the period.”

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We do not currently have automated systems in place that capture and report on the information that would be required under paragraph 6(a) because we do not believe that this level of detail would give us useful information with which to better manage the portfolio. We believe that this practice is consistent with that of other industry participants. Additionally, we do not believe that this information will provide the users of the financial statements with a better understanding of the portfolio. As we do not use this information to manage the portfolio, monitor profitability, or assess the risk of the portfolio, we cannot understand how the users of the financial statements would do so. We believe that there is no inherent difference between income recognized at inception and subsequent changes in fair value for derivative instruments that are measured using a model that meets the minimum reliability threshold for initial recognition of income.

We acknowledge that the information pertaining to deferred gains and losses required under paragraph 6(b) may provide useful information to the users of the financial statements. We also note that the Working Draft will require, among other things, that an entity disclose the aggregate fair value at the balance sheet date and total gains or losses reported in earnings or other comprehensive income during the reporting period for each major category of assets and liabilities that are remeasured at fair value. In view of these requirements, we do not believe that the additional disclosures required by paragraph 6(a) of the proposed FSP would provide meaningful, incremental information or that the benefits of these disclosures would justify the implementation costs. We therefore recommend that the disclosures required by paragraph 6(a) be deleted from the proposed FSP.

Transition

The proposed FSP would be applied on a limited retrospective basis, with the impact of adoption recorded as an adjustment to beginning retained earnings. We note that the FSP will affect an entity's determination as to whether the fair value of a derivative transaction, when calculated based on a valuation model, is sufficiently reliable to overcome the presumption that the transaction price is the appropriate measure of fair value. We disagree with the FASB's conclusion that this represents a change in method that is separable from a change in estimate. Instead, we believe that the measurement of fair value, when not determined by a transaction price, is inherently an estimation process, and that adoption of the FSP represents a change in method that is not separable from a change in estimate.

The fair value of certain derivatives is currently measured in accordance with EITF Issue No. 02-3, *Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities* (EITF 02-3). As articulated by the FASB staff guidance in footnote 3 of EITF 02-3, in the absence of a sufficiently reliable model based on observable market data, the transaction price represents the best estimate of fair value. That principle has been

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refined under the proposed FSP to conform the definition of a sufficiently reliable model to the fair value hierarchy set forth in the Working Draft. We believe that this change in the method of measuring fair value, which is based on a revised perspective as to when a valuation model is sufficiently reliable, is inseparable from a change in the estimate of fair value.

In addition, we believe that retrospective application will unfairly penalize entities that have conservatively applied the guidance in EITF 02-3. We currently defer unrealized gains on derivative transactions that are valued using what are now defined as Level 4 and Level 5 estimates in the Working Draft. In our experience, the gains that are deferred represent true economic profits. However, due to the proposed transition provisions (i.e., the impact of adoption would be recorded as an adjustment to beginning retained earnings), any deferred gains as of the date of adoption that are associated with Level 4 estimates, which represent a significant majority of our deferred gains, will never be recorded in earnings. We fail to see how this outcome results in an improvement to financial reporting. We believe that a reader of the financial statements will better understand the economics of the transactions if the previously deferred gains associated with Level 4 estimates are recorded in earnings, and we do not believe that a mere footnote disclosure will accomplish this purpose.

We therefore recommend that the impact of adopting the proposed FSP as it affects derivative contracts that were previously accounted for in accordance with EITF 02-3 be recognized prospectively as a change in method that is not separable from a change in estimate.

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We appreciate the opportunity to express our views in this letter. Should you have questions, please feel free to contact Randy Shearer at 704-388-8433 or me at 704-387-4997.

Sincerely,

/s/

John M. James
Senior Vice President
Corporate Controller

cc: Neil A. Cotty, Chief Accounting Officer
Randall J. Shearer, Accounting Policy Executive