Bank of America.

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Mr. Lawrence Smith
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
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Dear Mr. Smith,

We are writing to express our views on the Exposure Draft of the Proposed Interpretation. Consolidation of Variable Interest Entities, a modification of FASB Interpretation No. 46 (the Exposure Draft). Bank of America Corporation provides a diverse range of financial services and products throughout the U.S., where it is the third largest U.S. bank in terms of assets, and in selected international markets. We are generally supportive of the Exposure Draft as it will provide necessary technical clarification to FASB Interpretation No. 46. Consolidation of Variable Interest Entities, an interpretation of ARB No. 51 (FIN 46), in terms of scope, evaluation of the voting vs. variable interest model and evaluation of the primary beneficiary. We agree with the FASB's efforts to recognize the importance of qualitative factors in applying FIN 46 since structures to which FIN 46 applies may be unique. Evaluation of qualitative factors and specific facts and circumstances is essential in applying rules created for a general population of entities to highly customized structures. While we generally believe that the Exposure Draft, when issued, will result in an operational consolidation framework for variable interest entities, certain provisions of the Exposure Draft warrant further consideration due to the potential accounting results and the impact to constituents. These provisions include the exception for mutual funds, the language in paragraph 5c regarding the variable interests to be considered in evaluating paragraph 5(b)(1) of FIN 46, the changes to paragraph 7 of FIN 46 regarding renegotiation of its debt or other contracts, the reconsideration events in determining whether an entity is a voting model or variable interest model entity, and the reconsideration events in determining the primary beneficiary of a variable interest entity. Finally, we believe the FASB should take a leadership role in resolving interpretation differences among public accounting firms related to the application of FIN 46.

Mutual Fund Exception

We concur with the Exposure Draft's proposed scope exception for mutual funds but we are unclear as to the rationale for limiting the exception to mutual funds organized as trusts. Mutual funds can be organized in legal forms other than trusts, such as corporations. We propose expanding the exemption to all mutual funds regardless of the legal form of the fund.

Paragraph 5c: Variable Interests to be Considered in Paragraph 5(b)(1)

Paragraph 5c (previously the last sentence of paragraph 5) of FIN 46 states that an entity would not be deemed to have met the characteristic of paragraph 5(b)(1) if the voting rights of some investors are not proportional to their obligations to absorb the expected losses of the entity, to receive the expected residual returns of the entity or both and substantially all of the entity's activities either involve or are conducted on behalf of an investor that has disproportionately few

voting rights. The Exposure Draft proposes additional language to state that when considering whether the characteristics in paragraph 5c regarding disproportionality are present, all contractual interests (not just the equity investment at risk) should be considered.

This requirement appears to prevent any entity from being a voting interest model entity where an equity investor also has other contractual interests with the entity besides the equity. For instance, assume Investor A and Investor B both own 50% of the equity of Entity ABC. Investor A and Investor B both receive 50% of the voting interests and will absorb 50% of the losses and returns allocated to the equity investors of Entity ABC. However, Investor A also has a loan to Entity ABC which bears a variable rate of interest. If all of the contractual interests of an investor must be considered, this entity would not be a voting interest model because Investor A would absorb over 50% of the returns of the entity since the variable rate of interest will provide Investor A with more returns than Investor B since Investor A has more contractual interests than just the equity. Conversely, if the investors reallocate their voting rights to give Investor A voting rights associated with its debt interest. Entity ABC will be a variable interest entity as the equityholders will not hold all the voting rights. We believe this outcome would have a significant impact on joint ventures and believe the Exposure Draft's wording should be changed to indicate that the provisions in paragraph 5c should be considered in the context of only losses and returns allocated or available to the equity investors. As long as the entity is able to meet the sufficiency of equity test and the other provisions of paragraphs 5a and 5b, the potential returns received from other variable interests, such as debt interests, should not cause an entity to be a variable interest entity just because one party provides both an equity investment and some other form of investment or service.

Paragraph 7: Renegotiation of Debt Contracts

In paragraph 7, the Exposure Draft proposes additional clarification to the reconsideration events for determining whether an entity is a voting or variable interest entity. Specifically, the Exposure Draft states that renegotiation of an entity's debt or other contracts would not require reconsideration of whether FIN 46 applies if the renegotiation was caused by operating losses and the renegotiation did not involve modification to the characteristics of the equity investment at risk in the entity or the level of subordinated financial support. We understand this to mean that renegotiation of debt would be a triggering event for reconsideration of whether an entity is under a voting or variable interest model if the renegotiation included the issuance of warrants, the increase or recapitalization of equity or a change in the amount of subordinated debt provided to the entity. These items are not necessarily unusual in connection with the renegotiation of debt and we ask the FASB to reconsider whether the renegotiation of debt in connection with these circumstances should cause a triggering event. In particular, we do not believe a triggering event should occur when, in connection with the renegotiation of debt, additional equity has been provided to the vehicle by a third party or when the level of subordinated debt has decreased because the lenders have achieved protection on their interests. Additionally, the receipt of equity interests by a lender may not expose the lender to additional amounts at risk if the equity is received in satisfaction of the debt. If the lender is not exposed to additional risk, the renegotiation of debt should not lead to a triggering event to review the status of the entity as a voting model entity. It also does not seem logical that the lender should be in a position where it might be required to consolidate the entity when the lender has completely reduced the balance of its loan to an entity because of charge-offs, even if the lender then receives equity in the renegotiation of the debt. As such, we ask the FASB to also consider whether the lender's contractual exposure (or remaining exposure if de minimis amounts of the loan were not fully charged off) should be considered in the triggering events for the renegotiation of debt.

Paragraphs 7 and 15: Reconsideration Events

Paragraphs 7 and 15 of FIN 46 discuss the reconsideration events for evaluating whether an entity is a voting or variable interest entity (paragraph 7) and for evaluating the primary beneficiary of a variable interest entity (paragraph 15). The Exposure Draft proposes to require a reconsideration of the voting vs. variable interest model or the primary beneficiary "whenever the design of the entity or the ownership of interests in the entity change in a manner that could change that determination." While changes in the design of the entity may be few, changes in the ownership of interests in the entity could occur frequently and would significantly increase the costs of FIN 46 as constituents would have to designate resources to constantly monitor trades by other parties associated with the vehicle to determine whether a reconsideration event had occurred. The Exposure Draft's changes are based on the premise that every party with a contractual interest in an entity has complete and full information, on a timely basis, regarding all the other parties' interests and changes in those interests with the entity itself. This premise is incorrect for private securitizations and privately held entities as investors in these entities have no industry or formal mechanism through which they can monitor trades or other changes among the other parties associated with the entity.

The Exposure Draft's proposed changes are more onerous than those contemplated in the original exposure draft of FIN 46 which suggested requiring reconsideration on a quarterly basis. In response to comment on the cost of quarterly monitoring, the FASB specifically changed the reconsideration events in FIN 46. We are unclear as to the rationale for proposing reconsideration events that would require monitoring on an almost daily basis given the previous industry comment. Because of the significant cost and information risk associated with these changes, we recommend the reconsideration events for a party involved with a variable interest entity be limited to significant changes in governing documents of the entity, significant changes in contractual relationships with the entity and additional purchases or disposals of that party's variable interests in the entity (effectively eliminating changes in ownership interests as a trigger for reconsideration of the primary beneficiary). We recommend maintaining the existing reconsideration events in paragraph 7 (as clarified for renegotiation of debt or other contracts) for evaluation of the voting vs. variable interest model.

Resolution of Different Interpretations

In conjunction with the application of FIN 46, constituents are facing an unprecedented environment where public accounting firms have such different interpretations of an accounting standard that the industry is faced with different accounting for the same transaction. This inconsistency is most prevalent in the banking industry as constituents audited by one firm have continued to consolidate trusts that issue preferred securities for the benefit of the bank while constituents audited by other firms were required to deconsolidate these trusts based on their auditors' view of FIN 46. This inconsistency was highlighted in a November 17, 2003 article in the American Banker based on the review of Form 10-Q filings by the largest banks. Another example of the inconsistencies among firms involves the methodology for calculating expected losses. While accounting firms may hold slightly different views on other topics, the differing views on FIN 46 are extremely significant as they result in different consolidation or deconsolidation answers for the same transaction. We do not believe these differences among constituents in the same industry are acceptable. We urge the FASB to lead the effort to resolve these differences among the accounting firms such that financial statements of constituents will be comparable and consistent.

In summary, we are generally supportive of the Exposure Draft but believe certain modifications, principally to the reconsideration events, as well as resolution of differences among accounting firms, are required in order to arrive at an accounting model with benefits to the investing community but without extraordinary cost to preparers. We would welcome the opportunity to further discuss our comments in this letter with the FASB.

Sincerely,

/s/Randall J. Shearer Senior Vice President Accounting Policy