



March 12, 2007



LETTER OF COMMENT NO. 59

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

Re: Exposure Draft, *Disclosures about Derivative Instruments and Hedging Activities, an amendment of FASB Statement No. 133* (File Reference No.1510-100)

Dear Mr. Smith:

We appreciate the opportunity to comment on the Exposure Draft, *Disclosures about Derivative Instruments and Hedging Activities, an amendment of FASB Statement No. 133* (the Exposure Draft). Bank of America Corporation, the second largest U.S. bank in terms of total assets, provides a diverse range of financial services and products domestically and in selected international markets. We routinely enter into derivative instruments for risk management purposes and on behalf of our customers.

We generally support the Exposure Draft's overall objective of providing enhanced disclosures for derivative instruments and hedging activities; however, we have three major concerns with the depth and breadth of certain of its provisions. Firstly, we question the benefit of the proposed disclosure of gross gains and losses on derivative instruments on a disaggregated basis. Secondly, we find no benefit in the requirement to report gains and losses related to derivatives held during the year for trading purposes that no longer exist at the balance sheet date. Both of these concerns are addressed more fully in the responses to the "Issues" below. Finally, we also believe the Exposure Draft fails to adequately distinguish between disclosures for derivatives used for risk management purposes and derivatives used for trading purposes. As a derivatives broker-dealer, we believe that the required disclosures for each broad category of derivative (trading vs. risk management) should be different.

The accounting treatment for trading derivatives is straight-forward, as they are marked to fair value with changes recorded in the income statement. It is the measurement (i.e. valuation) of trading derivatives that is complex. However, the proposed disclosures focus on the balance sheet classification of derivatives and do not enhance the financial statement user's understanding of the entity's trading activity. Within the context of trading activity, we believe that a reader would instead want to understand an entity's

exposure to different types of risk, which is generally best portrayed using value-at-risk or sensitivity analysis. Further, an entity's trading portfolio includes cash positions such as securities and is not limited to just derivative instruments. A piece-meal disclosure of derivatives within a larger trading portfolio will not be meaningful to the reader of the financial statements.

We understand the Board's desire to provide a comprehensive view of all derivatives used by an entity in a single footnote. However, we believe that the nature of information needed to understand the impact of derivatives used for risk management purposes differs significantly from the information needed to understand the impact of derivatives held in a trading portfolio. As the current Regulation S-K disclosure requirements provide adequate information to permit a reader to understand the risks inherent in an entity's trading activities, we recommend that the Board revise the scope of the Exposure Draft to exclude dealer-related trading derivative activity entirely.

We believe that the Exposure Draft overemphasizes the role of SFAS 133, *Accounting for Derivative Instruments and Hedging Activities* ('SFAS 133') hedge accounting and might lead a reader to infer, incorrectly, that only derivatives that are designated as hedges under SFAS 133 are used in risk management strategies. The proposed disclosures distinguish between derivatives designated as SFAS 133 hedging instruments and those that are not designated as such. By definition, the category of derivatives not designated as SFAS 133 hedges would include economic hedges and trading derivatives. As noted, we propose excluding trading derivatives from the scope of the Exposure Draft and including all derivatives used for risk management whether or not they are designated as hedges under SFAS 133. We believe that a more fundamental distinction is whether the derivative has been acquired for risk management purposes (including economic hedges which may not qualify for hedge accounting in accordance with SFAS 133) or for another purpose (principally trading activities). We believe that disclosures organized on this principle will best allow the reader of the financial statements to understand an entity's use of derivatives and their impact on the entity's financial statements.

Our responses to some of the issues presented by the Board as well as our additional comments are as follows:

Issue 1

Do you agree with the Board's decision to exclude from the scope of this proposed Statement prescriptive guidance about how derivative instruments should be presented and classified in the financial statements? Why or why not?

We agree with the Board's decision to exclude from the scope of the proposed statement prescriptive guidance on the presentation and classification of derivative instruments. We believe that the current accounting policy disclosures that detail income statement and balance sheet classification of derivative activity in addition to the proposed disclosures will provide the users of the financial statements with the information necessary.

Issue 3

This proposed Statement would require an entity to provide information on derivative instruments (including, but not limited to, notional amounts and fair value amounts), hedged items, and related gains and losses, by primary underlying risk, accounting designation, and purpose in the tabular format shown on p. 14 of the ED. Do you foresee any significant operational concerns or constraints in compiling the information in the format required by this proposed Statement? Are there any alternative formats of presentation that would provide the data more concisely?

Based on the proposed disclosures in the Exposure Draft, we believe that significant systems enhancements would be needed to capture the required information. These enhancements would be costly and will require a significant amount of time to complete. For example, our systems do not capture and track changes in the fair value of individual derivatives in a manner that would permit us to summarize amounts attributable to derivatives with a positive fair value separately from those that have a negative fair value on a disaggregated basis by primary underlying risk. Additionally, we also currently do not capture changes in the fair values of derivatives that no longer exist at the end of the reporting period separately from derivatives that remain outstanding as of the balance sheet date.

While we agree that a tabular presentation is appropriate, we have several observations with respect to the required disclosures therein.

Fair Values

Paragraph 44C of the Exposure Draft requires disclosure of fair value amounts of derivative instruments reported in the statement of financial condition on a gross basis. The Board explained in paragraph B27 that this “would help in better understanding what and how risks are being managed.”

We question whether presenting fair values on a gross basis (derivatives in asset positions separately from derivatives in liability positions) enhances understanding of the risk being managed, particularly since a derivative instrument can be an asset in one period and a liability in another. Entities that use derivatives for risk management purposes do not review their hedge results by gross asset and liability positions and, also do not manage their businesses using such information. Accordingly, we question the usefulness and relevance of this information.

The Board’s objective to “help in better understanding what and how risks are being managed” can be achieved through the requirement of presenting net fair values of derivatives disaggregated by primary underlying risk for all derivatives used in designated SFAS 133 hedging relationships. Due to the stringent requirements of SFAS 133 to qualify for hedge accounting, the user of the financial statements would know that such relationships are individually effective and would be able to determine the amount of absolute ineffectiveness from such hedging activity through the disclosure. Overall,

we believe that removing the requirement of gross presentation will not impact the quality of the information available to the users while it will also substantially reduce the burden of producing the necessary disclosure.

Disclosure of gains and losses

We recognize that the examples provided by the Board are one potential way of communicating information required by the Exposure Draft. However, we believe that Example 2 of Appendix A could be interpreted incorrectly in that it presents derivative instruments in gross asset and liability positions with corresponding impact for the change in the fair value of the derivative and the related hedged items. We do not believe this linkage between the income statement impact and gross values of derivatives is a requirement based on our reading of paragraph 44C(c) in the Exposure Draft. We believe that some may perceive this as a requirement and find it particularly challenging because the costs to map the derivative to the hedged items to capture linked activity will be additive over the costs to track derivative instruments on a gross basis in asset and liability positions. We recommend that the Board also include within the example derivatives in a net position with corresponding income statement impact of the derivative instruments and the hedged items (net basis presentation) and that gross values and notional amounts of derivatives be presented in a footnote to the table. See our recommendation to enhance the clarity of the example in the attachment to this letter.

Issue 4

This proposed Statement would require disclosure of (a) the existence and nature of contingent features in derivative instruments (for example, payment acceleration clauses), (b) the aggregate fair value amount of derivative instruments that contain those features, and (c) the aggregate fair value amount of assets that would be required to be posted as collateral or transferred in accordance with the provisions associated with the triggering of the contingent features. Do you foresee any significant operational concerns or constraints in compiling that information for this disclosure?

We ask that the Board provide further clarity on the meaning of “contingent features.” It appears that the Board’s focus is on credit related contingencies, whereas derivative contracts often contain various non-credit related contingent features such as early termination events, knock-out features, embedded floors and caps. Compliance for a financial institution to disclose all contingent features will involve significant effort as such features are not tracked centrally and the volume of information will be overwhelming to the reader of its financial statements. We understand that disclosures of contingent features may be beneficial for entities that are infrequent users of derivative instruments. Nevertheless, SFAS No. 5, *Accounting for Contingencies*, requires disclosure of material contingencies and obligations, and we therefore question the benefit that this proposed disclosure will provide.

Issue 5

This proposed Statement would require disclosure of notional amounts in tables that also will include fair values of derivative instruments by primary underlying risk, accounting designation, and purpose. Do you agree that this proposed Statement should require the disclosure of notional amounts? Why or why not?

As a broker-dealer with over \$27 trillion of notional amounts in derivatives, we know that notional amounts are not always representative of the overall exposure or the risk being hedged. Notional amounts are a reference for the calculation of fair value of the derivative and depending on the type of derivative, in certain situations the disclosure of notional amounts can actually be misleading. For example, a series of forwards or a series of options such as floors and caps used to hedge a specific risk over a certain time period will result in multiple notional amounts being reported in comparison to an interest rate swap with the same notional amount used to hedge the same risk over the same period of time. Accordingly, we do not believe that disclosure of notional amounts should be required and we question the benefit of such disclosure to the reader of the financial statements.

Issue 6

This proposed Statement would require disclosure of gains and losses on all derivative instruments that existed during the reporting period regardless of whether those derivatives exist at the end of the reporting period. This proposed Statement would not require disclosure of the aggregate notional amounts related to those derivatives that existed during the reporting period but no longer exist at the end of the reporting period. Do you agree that this proposed Statement should not require the disclosure of the aggregate notional amounts related to derivatives that no longer exist at the end of the reporting period? Why or why not?

We agree that aggregate notional amounts related to derivatives that no longer exist at the end of the period should not be required to be disclosed. We believe that this information is irrelevant and will not particularly enhance the reader's understanding of the use of derivative instruments by an entity. The cost to track this information for disclosure purposes will likely exceed any benefit to the reader of the financial statements.

Further, we believe that disclosure of gains and losses related to *trading* derivatives that no longer exist at the end of the reporting period is also not meaningful and will not provide useful information to the users of the financial statements. Furthermore, since there are no accounting ramifications other than the recording of the derivative at fair value for trading derivatives, such information is not currently tracked and will impose an additional burden on companies. Given the nature and purpose of trading derivatives, we question the benefit of disclosing this information.

Issue 11

The Board's goal is to issue a final Statement by June 30, 2007. The proposed effective date would be for fiscal years and interim periods ending after December 15, 2007. At initial adoption, comparative disclosures for earlier periods presented would be encouraged, but not required. Beginning in the year after initial adoption, comparative disclosures for earlier periods presented would be required. Does the effective date provide sufficient time for implementation?

The effective date of the Exposure Draft will be annual periods ending after December 15, 2007 for calendar year-end companies. This will require tracking certain of the information for the disclosure beginning as of January 1, 2007. As outlined earlier, some of the information for the disclosures required by the Exposure Draft is not currently tracked and would require significant operational effort and enhancements to our systems to capture such information. We question whether such change can be made and operationalized by year-end. Further, the challenge of capturing certain of the information on a retrospective basis back to the beginning of the year (i.e. January 1, 2007) in order to comply with the disclosure requirements is even greater. Significant resources are being utilized in order to adopt and comply with SFAS 157, *Fair Value Measurements*, and SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, during 2007. The requirements of the Exposure Draft will only exacerbate the resources constraint issues associated with the adoption of new accounting standards. Accordingly, we believe that the effective date for the Exposure Draft should be delayed by at least one year.

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We appreciate the opportunity to express our views in this letter. Should you have questions, please feel free to contact John James at 980-387-4997 or me at 980-388-8433.

Sincerely,

/s/

Randall J. Shearer
Senior Vice President
Accounting Policy Executive

cc: Neil A. Cotty, Chief Accounting Officer
John M. James, Corporate Controller

| Derivatives in Fair Value Hedges Related to: | B/S Classificati on of Derivative | End of period Notional Amount | End of period Fair Value | I/S Classification of Gain or (Loss) on Derivative | Amt of G/(L) Recognized in Income on Derivative | | I/S Classification of Gain or (Loss) on Hedged Item | Amt of G/(L) on Hedged Item Recognized in Income Attributable to the Risk Being Hedged | |
|---|--|-------------------------------------|-----------------------------|---|--|------|---|---|------|
| | | | | | 2006 | 2005 | | 2006 | 2005 |
| | | | | | Investments | | | | |
| Net derivatives** | Investments | 500,000 | 28,475 | Interest Income/Expense | xx | na | Investment income/expense | na | na |

**Includes derivatives in asset positions of 54,787 and derivatives in liability positions of 28,475 with notionals of 500,000 and 200,000 respectively