

September 28, 2004

Mr. Lawrence Smith Chairman Emerging Issues Task Force Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116 Letter of Comment No: $\frac{9}{9}$ File Reference: EITF03-1 Date Received: $\frac{9}{2809}$

Re: Proposed FASB Staff Position No. EITF Issue 03-1-b, "Effective Date of Paragraph 16 of EITF Issue No. 03-1, The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments" (FSP 03-1-b)

Dear Mr. Smith:

Bank of America is pleased to comment on FSP 03-1-b. We support the delay of the effective date of paragraph 16 of EITF 03-1 until issues regarding its implementation can be resolved. However, we strongly encourage the Board to delay the effective date of the remaining provisions of EITF 03-1 until implementation issues regarding the application of paragraphs 10-15 can also be considered and given due process. We also encourage the Board to clarify the meaning of the phrase "interest rate and/or sector spread increases" in FSP 03-1-b.

Full Delay of the Effective Date of EITF 03-1

Proposed FASB Staff Position No. EITF Issue 03-1-a, "Implementation Guidance for the Application of Paragraph 16 of EITF Issue No. 03-1, The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments" (FSP 03-1-a) provides implementation guidance specifically related to paragraph 16 of EITF 03-1. However, as indicated in the appendix to this letter, that proposed guidance may also significantly affect the application of paragraphs 10-15 of EITF 03-1. In particular, the Board asks whether the "minor impairments" exception should apply to all investments analyzed for impairment under EITF 03-1. Although it is currently unclear as to whether there will ultimately be any interpretative guidance in FSP 03-1-a that specifically relates to paragraphs 10-15 of EITF 03-1, given the significance of the application of such paragraphs to investments such as mortgage-backed securities, the Board should complete its due process for the issuance of FSP 03-1-a before requiring the application of EITF 03-1 to any investments.

Clarification of Phrase in FSP 03-1-b

Paragraph 2 of FSP 03-1-b currently states:

"The Board has directed the FASB staff to delay the effective date for the application of paragraph 16 of Issue 03-1 debt securities that are impaired solely because of *interest rate* and/or sector spread increases."

Page 2 September 28, 2004

Notwithstanding our request to delay EITF 03-1 in its entirety, we also suggest that the Board provide more clarity on the meaning of the phrase "interest rate and/or sector spread increases", a phrase that is not used in EITF 03-1 or in existing generally accepted accounting principles. We do not understand the Board's intended meaning of "sector spread increases", and without additional clarity there is inadequate guidance on what securities fall within the scope of paragraph 16 of EITF 03-1 and yet do not meet the criteria for delay under FSP 03-1-b.

Once again, we appreciate the opportunity to comment on FSP 03-1-b. We will be providing additional comments regarding the proposed interpretive guidance in FSP 03-1-a in a separate letter. If you have any questions regarding our comments, please contact us.

Sincerely,

/s/ Randy Shearer

Randy J. Shearer Director of Accounting Policy

cc: Mr. Neil Cotty

Chief Accounting Officer

Mr. Gregory W. Norwood Corporate Controller

Appendix

This appendix contains additional comments regarding the impact of the proposed interpretative guidance in FSP 03-1-a on investments within the scope of paragraphs 10-15 of EITF 03-1, which further suggests the need to delay the effective date of EITF 03-1 in its entirety.

• Questions 1 and 3(a) of FSP 03-1-a

Questions 1 and 3(a) appear to apply to paragraphs 10-15 as well as paragraph 16 of EITF 03-1. The relevance of this proposed guidance in applying paragraphs 10-15 of EITF 03-1 prior to the final issuance of FSP 03-1-a is unclear.

Question 2 of FSP 03-1-a

The Board specifically requests comments on whether the "minor impairments" exception should be extended to all investments. However, prior to considering the issue, paragraphs 10-15 of EITF 03-1 would presumably apply without the "minor impairments" exception. We believe due process should be given to the extension of the "minor impairments" exception prior to the effective date of any of the provisions of EITF 03-1 given the significant differences in application and the anomalous results that may occur without allowing for this exception in applying paragraphs 10-15 of EITF 03-1.

Consider the impairment analysis for the following two mortgage-backed securities depending on whether paragraphs 10-15 or paragraph 16 of EITF 03-1 applies.

Security	Par	Cost	Current Yield ¹	Fair Value ¹	Unrealized Loss	EITF 03-1	Possible Evaluation
Issue A– 6.5% coupon	\$100	\$107	4.3%	\$105	\$(2)	Para 10-15	Must assert ability & intent to hold to perhaps maturity to avoid impairment charge
Issue B- 5.0% coupon	\$100	\$102	4.3%	\$99	\$(3)	Para 16	Considered "minor"; no assertion/analysis required

In the example, although Issue B has a larger unrealized loss, it would be evaluated for impairment under paragraph 16 of EITF 03-1 since there is not a substantial premium to par, and the "minor impairments" exception would apply. However, an assessment of the ability and intent to hold Issue A to recovery (which could be maturity) is required since it falls within the scope of paragraphs 10-15 of EITF 03-1, even though it has a smaller unrealized loss that would be recovered more quickly from a minor shift in interest rates.

This anomaly arises from the application of the following two-step model in EITF 03-1 and FSP 03-1-a that yields results that are not always reflective of the economics:

Step 1 — Evaluate whether the existing premium to par or other factors giving rise to prepayment risk is significant enough to conclude that the security "can be contractually prepaid or otherwise settled in such a way that the investor would not recover substantially all of its cost." In practice, a percentage threshold is used to determine whether the prepayment amount at risk is "substantial", although practice varies in the percentage threshold used with ranges from as little as 2% of par to as much as 15% of par.

Step 2 – If the investor concludes that there is no substantial prepayment risk in Step 1, then paragraph 16 of EITF 03-1 applies, and therefore the "minor impairments" exception may be used in the impairment evaluation. Otherwise, the investment falls within paragraphs 10-15 of EITF 03-1, and therefore the "minor impairments" exception is not applicable.

¹ The current yield and fair value calculations take into consideration the impact of estimated prepayments based on market-based prepayment assumptions.

We believe a better model would be to compare the current fair value of the investment to its carrying amount and apply the "minor impairments" exception if that difference is considered insignificant. This seems appropriate since the fair value of any investment should adequately take into account the effects of prepayments. In any event, the Board should give further consideration and due process regarding the application of this "minor impairments" exception to all investments to address implementation issues, such as those illustrated above.

• Question 3(b) of FSP 03-1-a

The interpretative guidance in question 3(b) provides three circumstances in addition to paragraphs 8 and 11 of FAS 115 for which a change in ability or intent would not necessarily call into question the ability or intent to hold other securities to recovery. These additional circumstances would apply only to securities within the scope of paragraph 16 of EITF 03-1. An unintended consequence would be an implicit conclusion that investments that are not within the scope of paragraph 16 of EITF 03-1 should be analyzed as if they were held-to-maturity securities. Was it the Board's intention to apply the restrictive held-to-maturity classification requirements for purposes of applying paragraphs 10-15 of EITF 03-1? If so, this obviates the available-for-sale classification for debt securities within the scope of paragraphs 10-15 of EITF 03-1, which we believe requires an amendment to FAS 115. The Board should address this issue prior to the effective date of paragraphs 10-15 of EITF 03-1.