Bank of America

LETTER OF COMMENT NO. 28

October 15, 2008

Mr. Russell G. Golden
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P O Box 5116
Norwalk, Connecticut 06856-5116

File Reference: Proposed FSP FAS 140-e and FIN 46(R)-e, "*Disclosures about Transfers of Financial Assets and Variable Interest Entities*" (the FSP)

Dear Mr. Golden:

Bank of America Corporation appreciates the opportunity to comment on the proposed Financial Accounting Standards Board ("FASB") Staff Position identified above (the "FSP"). Bank of America Corporation, one of the three largest U.S. banks, provides a diverse range of financial services and products throughout the United States and in selected international markets. We routinely securitize assets and use special purpose entities for liquidity, alternative funding, and risk management purposes. We also structure securitization vehicles on behalf of and for the benefit of our customers.

We support the Board's efforts to improve financial reporting by requiring more timely and transparent disclosure about transfers of financial assets and risks related to the use of special purpose entities. As a general observation, we are disappointed that the additional disclosure requirements are prescriptive and rules-based. We had hoped for a principles-based approach that would enable reporting enterprises to tailor their disclosures to emphasize information that is most meaningful given their particular circumstances. We urge the Board to consider this approach.

We also have specific comments about several provisions of the FSP. Certain proposed disclosures call for information that is speculative and therefore not meaningful. In addition, we believe that the expanded scope of the disclosures is too broad and calls for the disclosure of an excessive amount of information. Also, given the voluminous amount of new information that would be required at a disaggregated level, the proposed effective date does not provide adequate time to implement the FSP. Our comments on these and other matters are set forth in more detail below.

Speculative disclosures

Certain proposed disclosures appear to call for the reporting enterprise to disclose possible outcomes that cannot be reliably predicted. For example:

- Paragraph D3(c) of the FSP would require parties holding a significant interest in a QSPE to disclose "terms of arrangements that ***could*** require the enterprise to provide financial support (for example, liquidity commitments and obligations to purchase assets) to the qualifying SPE, including events or circumstances that ***could*** expose the enterprise to loss. Consideration should be given to both explicit and implicit arrangements" (emphasis added). Similar disclosures would be required for transferors with continuing

involvement in assets transferred to a QSPE, primary beneficiaries, holders of significant variable interests in a VIE, and sponsors of a VIE.

This language could be interpreted as a broad requirement to consider any future circumstance in which the enterprise might provide support, even if such support is not contractually required. This is tantamount to speculation about possible events that are outside of the reporting enterprise's control and may never occur. Such speculation could expose the enterprise to litigation if it fails to foresee future events or if it fails to act in a manner consistent with prior disclosures of actions that could be taken. We therefore recommend that this disclosure be limited to contractual arrangements that would require the enterprise to provide financial support.

- Proposed paragraph 24 of FIN 46(R) would require the sponsor of a VIE or an enterprise with a significant VI in a VIE to disclose its maximum exposure to loss and its "estimated exposure to loss or range of that loss" if the maximum exposure to loss is not representative of its estimated exposure to loss. The reporting enterprise would also be required to disclose the methodology used to determine its estimated loss exposure, including qualitative and quantitative factors and assumptions.

  The maximum loss exposure amount, which is currently required to be disclosed under FIN 46(R), is based on contractual obligations and can typically be quantified with a reasonable degree of precision. We are not suggesting that this disclosure be eliminated. However, we believe that the disclosure of an estimated loss amount that does not meet the criteria for recognition under existing accounting standards will result in information that is not meaningful due to the significant level of uncertainty related to such estimates. We therefore recommend that loss estimates be disclosed only if they meet existing standards for recognition in the financial statements, including loss contingencies, derivative liabilities, and financial guarantees recorded in accordance with FAS 5, FAS 133, and FIN 45, respectively.

- One of the objectives of the FSP, as stated in paragraph 8(a), is to provide users of the financial statements with an understanding of the judgments and assumptions made by the reporting enterprise in determining whether to consolidate a VIE or to disclose information about the VIE. In support of this objective, proposed paragraph 22C of FIN 46(R) would require a reporting enterprise that is a primary beneficiary or sponsor of a VIE or holds a significant variable interest in a VIE to disclose how it determined whether it is or is not the primary beneficiary and whether "a different assumption or judgment ***could have reasonably been made*** that would result in a different conclusion" (emphasis added).

  As discussed in FSP FIN 46(R), "*Determining the Variability to Be Considered in Applying FASB Interpretation No. 46(R)*", the identification of a primary beneficiary begins with an analysis of the design of the VIE. Risks to be considered in the analysis may include, but are not limited to, credit risk, interest rate risk, foreign currency exchange risk, commodity price risk, equity price risk, and operations risk. Once risks have been identified, judgments and assumptions must be made about the impact of such risks on future cash flows of the VIE. We believe that this requirement would result in voluminous disclosures that would not be meaningful or useful to the reader. For example, large financial service companies may be involved in a multitude of VIEs, either as a sponsor, significant variable interest holder, or primary beneficiary. The volume of disclosures that would be

required to provide meaningful analyses could be overwhelming for a large institution such as ours, and we question whether the information would be beneficial to the reader. We also disagree with the requirement that provides for disclosure of whether a different assumption or judgment could have reasonably been made that would result in a different conclusion. Many assumptions are made relating to the decision of consolidating a VIE, and providing disclosure of the assumptions that we did not make and conclusions that we did not reach is simply overkill. If one were to take a broad view of the proposed disclosures, what is being requested is disclosure of all possible assumptions that could be made related to a variable interest entity. Is the information really useful to the reader? We therefore recommend that the objective in paragraph 8(a) and the requirements of proposed paragraph 22C(a) be deleted.

Expanded scope

The scope of certain disclosures has been expanded to include sponsors with a variable interest that is not significant, non-transferors with a variable interest in a QSPE that is significant, and secured borrowings. While some of this expansion is warranted and will provide the reader with additional, meaningful information, we believe that some of the additional information is excessive. Specifically:

- Proposed paragraph 22C of FIN 46R would require the sponsor of a VIE that holds an insignificant variable interest in the VIE to provide details about its involvement with the VIE. We believe this is intended to capture situations in which the sponsor has some form of continuing involvement that is significant but does not meet the definition of a variable interest. If the sponsor has neither a significant variable interest nor significant continuing involvement, we believe that a discussion of the sponsor's limited involvement would not provide the reader of the financial statements with meaningful information. We recommend that these disclosures be required only if the sponsor has continuing involvement with the VIE that is significant.

- Appendix D sets forth new disclosure requirements for a non-transferor that holds a significant variable interest in a QSPE, including the nature, purpose, size, and activities of the QSPE. This requirement would encompass investments in RMBS, CMBS, and ABS securitization vehicles that are typically structured as QSPEs. A passive investor in such asset-backed securities that is neither the transferor or the sponsor might find this requirement to be onerous due to the time required to review its portfolio, quantify the size of the issuance vehicle, and determine which investment is a significant variable interest. We question whether the resulting disclosure, which would include information about some, but not all, of the investor's portfolio, would add value. We therefore recommend that an enterprise which holds a portfolio of asset-backed securities but is neither the transferor nor the sponsor and does not provide liquidity, credit, or other forms of support to the issuers be exempt from this disclosure requirement.

- The FSP would expand the scope of certain disclosures in FAS 140 to include asset transfers that are accounted for as secured borrowings. We agree that readers of the financial statements will benefit from some of these disclosures, such as the requirement in proposed paragraph 17(a) to disclose whether the transferred assets are restricted to repay specific obligations. However, we do not believe that the information required in proposed paragraph 17(i) of FAS 140, which requires disclosures pertaining to a transferor's continuing involvement with transferred assets, should be expanded to

include continuing involvement with transfers that are accounted for as secured borrowings.

Transfers that are accounted for as secured borrowings might arise, for example, when assets are transferred into an SPE that fails to meet the criteria of a QSPE and, as a result, the transfer fails to meet the criteria for sale accounting. Consider the requirement in proposed paragraph 17(i)(5) to provide a sensitivity analysis showing the effect that changes in assumptions could have on the fair value of assets and liabilities that relate to continuing involvement of the transferor. This disclosure is meaningful when applied to subordinated interests retained after a transfer of assets to a QSPE. However, the disclosure is not meaningful when applied to a pool of assets that have been transferred to an SPE that failed to meet the criteria of a QSPE. All or some of the risk of loss associated with changes in fair value of the transferred assets may have been legally transferred to the investors in the SPE, but the analysis would give the appearance that the transferor retains the risk. Other disclosures in paragraph 17(i) overlap with fair value disclosures required by FAS 157 for assets and liabilities that are recorded on the balance sheet of the reporting enterprise. We therefore recommend that the scope of proposed paragraph 17(i) not be expanded to include transfers that are accounted for as secured borrowings.

Continuing Involvement

In addition to expanding the scope of paragraph 17(i) of FAS 140 to include secured borrowings, as discussed above, the disclosures required by this paragraph would be significantly expanded by the FSP. For example:

- The proposed scope of the paragraph would include all forms of a transferor's continuing involvement with assets that have been transferred to an SPE. This is broader than the current scope, which includes only retained interests and servicing assets or liabilities.

- Proposed subparagraph (1) would require new disclosures of the nature, purpose, size and activities of the SPE.

- Proposed subparagraph (2) would require qualitative and quantitative disclosures about the transfer that provide users with sufficient information to assess risks related to the transferred assets to which the transferor continues to be exposed.

- Proposed subparagraph (7), which requires disclosure of managed assets, including outstanding principal, delinquencies, and credit losses, is not significantly different from current subparagraph 17(i)(4). However, the FSP would delete footnote 10 of FAS 140 which allows the transferor to exclude securitized assets that it services but with which it has no other continuing involvement.

If a transferor's continuing involvement is not significant, we do not believe that the extensive new disclosures that would be required by proposed paragraph 17(i) are meaningful. In addition, if the transferor's continuing involvement is limited to servicing, we believe that the disclosures currently required under FAS 140 provide sufficient information about servicing assets and liabilities, including a description of valuation techniques and assumptions used to measure fair value.

We therefore recommend that the scope of paragraph 17(i) be restricted to situations in which the transferor's continuing involvement with transferred assets is significant. If this recommendation is not adopted, we recommend that, at a minimum, no new disclosures be required if the transferor's only form of continuing involvement is limited to servicing.

Definition of Continuing Involvement

The FSP includes the following definition of continuing involvement:

> "For purposes of this FSP, *continuing involvement* is defined as any involvement with the transferred financial assets that permits the transferor to receive cash flows or other benefits that arise from the transferred financial assets or that obligates the transferor to provide additional cash flows or other assets to any party related to the transfer. Examples of continuing involvement include, but are not limited to, servicing arrangements, recourse or guarantee arrangements, agreements to purchase or redeem transferred financial assets, derivative instruments related to the transferred financial assets, implicit commitments to provide financial support, pledges of collateral, and the transferor's beneficial interests."

We believe that the phrase "derivative instruments related to the transferred financial assets" is intended to exclude derivatives such as plain vanilla interest rate and foreign exchange derivatives that do not meet the definition of a variable interest. Such derivatives are described in FASB Staff Position No. FIN 46(R)-6, *Determining the Variability to Be Considered in Applying FASB Interpretation No. 46(R)*. To eliminate doubt, we recommend that the definition explicitly state that derivatives meeting this description are not considered to be continuing involvement with the transferred financial assets.

Calculation of Gain/Loss on Sale

Proposed paragraph 17(h)(2) of FAS 140 would require the transferor to disclose not only the amount of gain or loss on sale, which is currently required, but also "quantitative information about how the gain or loss was determined". Presumably, this would require us to separately disclose the fair value of sale proceeds, the carrying value of assets sold, and the fair value of any liabilities incurred for each major class of transactions. We do not believe that this additional information is meaningful, particularly given the level of detail that would be required in proposed paragraph 17(i) of FAS 140 as to the valuation of assets and liabilities that relate to a transferor's continuing involvement. We therefore recommend that the proposed requirement for expanded disclosures of gain or loss calculations be deleted.

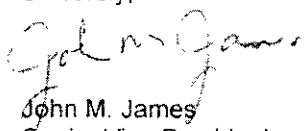
Effective Date

If a final FSP is issued in November or December of 2008, the expanded disclosures would be required for calendar-year preparers beginning with the December 31, 2008 financial statements. This would not provide adequate time to implement the FSP. The scope of the disclosures will be greatly expanded by the FSP and voluminous amounts of data will be required at a more disaggregated level. We will need time to implement procedures and modify systems to gather the data and prepare the required disclosures, subject to appropriate management oversight and internal controls. We therefore recommend that the new disclosures be required in the first interim period beginning after November 15, 2008.

* * * *

We appreciate the opportunity to express our views in this letter. If you have any questions, please feel free to contact Randall Shearer (980.388.8433) or me (980.387.4997).

Sincerely,



John M. James
Senior Vice President and
Corporate Controller

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