October 17, 2013

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Dear Technical Director:

Re: Proposed Accounting Standards Update (Revised), Consolidation (Topic 810): Measuring the Financial Liabilities of a Consolidated Collateralized Financing Entity (File Reference No. EITF-12Gr)

We appreciate the opportunity to comment on the Proposed Accounting Standards Update (Revised), Consolidation (Topic 810): Measuring the Financial Liabilities of a Consolidated Collateralized Financing Entity (the “Proposed Update”). Bank of America Corporation provides a diverse range of banking and non-banking financial services and products domestically and internationally. We are one of the largest banks in the U.S. in terms of total assets, and we routinely utilize variable interest entities (“VIEs”) including collateralized financing entities (“CFE”) in the ordinary course of business to support our own and our customer’s financing and investing needs.

We acknowledge that in issuing the Proposed Update it is the objective of the Financial Accounting Standards Board (the “Board”) to resolve diversity in practice in the accounting for the difference upon initial consolidation between the fair value of assets and the fair value of the liabilities of a CFE. Although we support the objective we believe the initial and subsequent measurement methodology in the Proposed Update will not appropriately reflect our net risk exposure (i.e., retained interests excluding compensation for services) to a CFE in earnings and is inconsistent with the way we manage our investments in such entities. In circumstances where the net risk exposure is managed on a fair value basis all changes in fair value of that net risk exposure should be reflected in earnings whether or not the CFE is consolidated. Reporting the net risk exposure through earnings is also consistent with ASC 820 Fair Value Measurement (ASC 820) that provides guidance for measuring certain groups of financial assets and financial liabilities on a net basis.

We believe the Proposed Update is overly prescriptive regarding the requirement to use the assets of a CFE as the sole basis to allocate value to the financial liabilities of that CFE. In our view it is more appropriate for a reporting entity to determine an asset or liability measurement approach based on the most reliable and/or observable information. We are concerned that the Proposed Update may lead to non-economic results being recorded in earnings. A non-economic result in earnings appears to arise from taking the total fair value of financial assets and carrying amount of nonfinancial assets and allocating a proportionate amount to the retained interest versus reflecting the fair value of that retained interest.

We note that in the Basis for Conclusions (BC10) the Board considered but decided against permitting the value of the financial assets of a CFE to be measured on the basis of the fair value of the financial liabilities of that CFE. The Board noted that “this could result in the fair value of the financial assets inappropriately including an amount relating to the changes in the fair value of any nonfinancial assets held by the collateralized financing entities”. However, by design and as acknowledged in the Proposed Update, CFEs will have limited, if any, nonfinancial assets or any such assets will be held temporarily.
For example, in a typical re-securitization of mortgage backed securities it is unlikely for this structure to ever hold a nonfinancial asset. As a result, we do not believe nonfinancial asset considerations should be the primary driver in determining the appropriate measurement approach to be applied in accounting for the assets and liabilities of a consolidated CFE.

The proposed disclosure amendment set out in 825-10-50-8j of the Proposed Update specifically exclude financial liabilities measured in accordance with 810-10-30-2A and 810-10-35-6 because the liabilities would not explicitly be measured at fair value under ASC 820. Under a net risk exposure approach, we believe the gross assets and liabilities should be included in the fair value disclosures because gross presentation will be consistent with ASC 810 Consolidation and between CFE and non-CFE VIE entities held at fair value. Additionally, ASC 820 allows portfolio level adjustments to be allocated to gross exposures on a reasonable and consistent basis for financial statement presentation but does not prescribe an allocation method (as per ASC 820-10-35-18F).

The Board should also consider the interaction and timing for implementation of this Proposed Update with the proposed Accounting Standards Updates, Consolidation (Topic 810): Principal versus Agent Analysis and Financial Instruments – Overall (Subtopic 825-10) Recognition and Measurement of Financial Assets and Financial Liabilities. The former may impact current consolidation conclusions and therefore certain entities may move in or out of scope of the Proposed Update upon issuance of that standard. The latter would require the measurement of non-recourse financial liabilities to be measured on the same basis as the related financial assets and it specifically excludes this application when some of the related assets are nonfinancial.

We believe the fair value option should be retained to enable consistency between CFEs and non-CFEs. In our view, the same model should be applied by both public and non-public entities as we believe there should be a single level of generally accepted accounting principles in the United States.

In summary, we believe it is more appropriate to provide the reporting entity with the ability to measure at fair value the assets and liabilities of its CFEs based on the most reliable and/or observable data. In our view the analysis should be completed for each CFE rather than an entity being required to account for all CFEs in the same manner or requiring the entity to make an accounting policy election for all CFEs. Disclosures should then be required to provide the user of financial statements with sufficient information to understand the rationale upon which a reporting entity determined the basis for the fair value measurement of the assets and liabilities of their CFEs and their allocation methodology.

We appreciate the opportunity to express our views in this letter. Should 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: Bruce Thompson, Chief Financial Officer
    Neil A. Cotty, Chief Accounting Officer
    Randall J. Shearer, Accounting Policy Executive