March 28, 2013

Technical Director – Susan M. Cosper
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Accounting Standards Update, Transfers and Servicing (Topic 860): Effective Control for Transfers with Forward Agreements to Repurchase Assets and Accounting for Repurchase Financings (File Reference No. 2013-210)

Dear Ms. Cosper:

We appreciate the opportunity to comment on the Proposed Accounting Standards Update, Transfers and Servicing (Topic 860): Effective Control for Transfers with Forward Agreements to Repurchase Assets and Accounting for Repurchase Financings (the “Proposed Update”). Bank of America Corporation (“BAC”) 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 enter into transfers with forward agreements to repurchase assets to accommodate customers and earn interest rate spreads, obtain securities for settlement and finance inventory positions. The Proposed Update, if finalized in its current form, will result in changes to the accounting for certain transactions that we do not consider to be consistent with the control based model in Topic 860.

We acknowledge that it is the objective of the Financial Accounting Standards Board (the “Board”) to clearly identify the repurchase agreements, securities lending and other transactions that should be accounted for as financing transactions, with a focus on repurchase agreements to the maturity of the underlying collateral. We share the Board’s goal of providing users of financial statements with meaningful financial information and disclosure. However, we believe that the requirements as currently drafted are ambiguous regarding scope and may not provide users of financial statements with relevant and comparable financial information.

Specifically, we are concerned that the proposals may produce a different accounting result for economically similar cash settled repurchase agreements based on whether they are settled before or at maturity of the underlying collateral. We do not understand the conceptual basis for this distinction (refer to our response to Question 1). We believe conceptually that if a typical repurchase transaction or a repurchase to maturity transaction is settled in cash in all instances (including in a default scenario) then those transactions should be accounted for as sales because the transferor does not maintain effective control under the existing derecognition model. There also appears to be an inconsistency between the guidance to be codified and other sections of the Proposed Update. Paragraph 860-10-40-24(aa)(3) could be interpreted to include repurchase agreements and other economically similar transactions documented in a different legal form, for example, a sale plus a total return swap (“TRS”),
as it refers only to an ‘agreement’. However, in the basis for conclusions, which will not be codified, clearly suggests that the guidance does not extend beyond repurchase agreements.

We also note that the majority of typical repurchase and resale transactions governed under a Global Master Repurchase Agreement ("GMRA") or Master Repurchase Agreement ("MRA") are recorded as financings. If the goal of the Board was to ensure repurchase to maturity transactions are accounted for as financings then in the near term the Board could provide a rule to this effect.

Further, we believe the implementation guidance in 860-10-55-35(c) is not necessary and may lead to the introduction of a requirement rather than the consideration of a factor in the “substantially the same” analysis. We believe the guidance should clearly indicate that the determination as to whether an asset to be repurchased meets the “substantially the same” characteristics should be performed at inception of the transaction based on the contractual terms of the agreement (refer to our response to Question 5). If the contractual terms are not sufficiently specific, as is the case with purchases of generic to-be-announced ("TBA") securities, then the asset to be repurchased cannot meet the “substantially the same” characteristics.

Finally, we have concerns about the scope, operationality and expected usefulness of the proposed additional disclosure requirements (refer to our responses to Questions 6 and 7). The disclosures are focused on the effective control criterion but a transfer of a financial asset may not be accounted for as a sale based on one of the other criteria (e.g., isolation of transferred financial assets). Regarding 860-30-50-3a, if the intention was to provide disclosures related to the collateral underlying typical repurchase transactions then that should be stated clearly.

Please see Appendix A for our responses to certain questions presented by the Board.

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
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The following are our responses to certain of the questions presented by the Board:

**Question 1:**
This proposed Update would amend the effective control guidance in paragraphs 860-10-40-5(c)(1) and 860-10-40-24 to require that transactions that involve a transfer of a financial asset with an agreement that both entitles and obligates a transferor to repurchase or redeem the transferred asset at the maturity of the transferred financial asset would maintain the transferor’s effective control. Therefore, those transactions would be accounted for as a secured borrowing.

Do these proposed amendments represent an improvement in financial reporting?

We do not agree that the proposed amendments referred to above represent an improvement in financial reporting. While we appreciate that the Board is seeking to address a concern by users that there is no economic distinction between repurchase to maturity transactions and agreements that physically settle prior to maturity, we believe that the proposed amendments are not conceptually aligned with the current control model for accounting for transfers of assets and believe the Board acknowledges this in paragraph BC22 which states “…the approach they have adopted is not aligned with the existing concept of effective control…”.

Paragraphs 860-10-40-24(aa)(3) and 860-10-55-51A(c) specify that repurchase to maturity agreements which by definition must be cash settled (gross or net), that meet all other conditions in paragraph 860-10-40-24, are deemed to maintain the transferor’s effective control over the transferred financial asset. In contrast, repurchase agreements that are cash settled before maturity as described in the example in paragraph 860-10-55-51A(c) are specifically deemed by the Board not to maintain the transferor’s effective control. Yet we believe there is generally no economic distinction between agreements that settle prior to or at maturity if they settle (gross or net) in cash or by physical delivery. However, in the Proposed Update the Board has specified different accounting treatment for such trades. Thus, in the context of a control based framework we do not agree that it is conceptually appropriate that these transactions should result in a different accounting treatment. We also believe that it is generally accepted and applied in practice to account for typical repurchase transactions under a GMRA or MRA as secured borrowings. However, we believe conceptually if a typical repurchase transaction or a repurchase to maturity transaction under a GMRA or MRA is settled in cash in all instances (including in a default scenario) then those transactions should be accounted for as sales because the transferor does not maintain effective control of the transferred asset under the existing derecognition model.

Additionally, we also believe that the current drafting of paragraph 860-10-40-24 may lead to interpretation issues. The paragraph sets out guidance regarding an assessment of whether the transferor does not maintain effective control over transferred financial assets and specifically refers to “…an agreement that at its inception involves a transfer of existing financial assets and both entitles and obligates the transferor to repurchase or redeem the transferred financial assets from the transferee…”. However, the criterion in paragraph 860-10-40-24(aa)(3) could be considered to scope in agreements that do not meet the above requirement as they are cash settled at maturity and, therefore, by definition cannot involve the repurchase or redemption of the transferred financial assets.

One interpretation of the above language could be to conclude that as cash settled transactions cannot involve an entitlement or obligation to repurchase or redeem the transferred financial assets from the transferee, they cannot maintain effective control. This seems to be at odds with paragraph 860-10-40-24(aa)(3) and our understanding of the Board’s intent in issuing the Proposed Update. We believe that
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this inconsistency between the overarching definition of a repurchase agreement and the guidance on interpreting that definition could lead to confusion and differing application in practice.

**Question 2:**
Do you agree with the limited amendment to the condition for derecognition related to effective control in paragraphs 860-10-40-5(c) and 860-10-40-24? That is, do you agree with the application of secured borrowing accounting to the transactions described in Question 1 and not to other transactions resulting in similar risks and rewards for the transferor (for example, regardless of the form of settlement or whether the settlement date of the repurchase agreement is before, on or after the maturity date of the transferred financial assets)?

If not, what approach for assessing derecognition for transactions that involve transfers of financial assets with agreements that entitle and obligate the transferor to repurchase or redeem the transferred assets would be an improvement to the proposed approach?

As outlined above, we do not agree that the amendments are aligned with the overall effective control model for accounting for transfers of financial assets. We are concerned that the amendments may result in less clarity, less consistency and ultimately less comparability in financial reporting. Alternatively, in the near term, the Board could consider a rule to capture repurchase to maturity transactions as an exception to the current control derecognition model and focus, longer term, on whether the control model itself is the most appropriate derecognition model as noted in paragraph BC39. Another alternative would be for the Board to focus on introducing disclosures solely related to repurchase to maturity transactions.

The amendments require more clarity to determine if the scope is limited to transfers that take the form of repurchase agreements to maturity or extends to economically similar transactions that take a different legal form, for example, a sale plus a total return swap to the maturity of the transferred asset. The basis for conclusions discussed in paragraphs BC 19, BC37-38 and BC59-62 of the Proposed Update appears to indicate that the guidance would not extend beyond repurchase agreements, however, paragraph 860-10-40-24(aa)(3) may be interpreted to include these transactions and it is this paragraph that will ultimately be codified and applied in practice and not the basis for conclusions.

**Question 3:**
This proposed Update would require that an initial transfer and a repurchase agreement that relates to a previously transferred financial asset between the same counterparties that is entered into contemporaneously with, or in contemplation of, the initial transfer (a repurchase financing) be accounted for separately.

Would separate accounting for the initial transfer and repurchase financing reflect the economics of those agreements? Do these proposed improvements represent an improvement in financial reporting?

We agree with the proposed amendments because the current guidance links separate and distinct transactions. Typically, the economics of the transferred financial asset are retained by the initial transferee and in a separate transaction the initial transferor then provides financing to the transferee.
Question 4:
The Board affirmed that, consistent with existing guidance, effective control would be maintained by a transferor if the transferee returns a financial asset that is "substantially the same" as the initially transferred financial asset.

Should the return of financial assets that are substantially the same maintain the transferor's effective control over transferred financial assets? Why or why not?

We believe the current guidance in this area is sufficient and should not be amended (see our response to Question 5).

Question 5:
The Board decided that the characteristics that must be satisfied for a financial asset to be substantially the same in paragraph 860-10-40-24A should result in identifying those transactions in which a transferor is in economically the equivalent position with the return of a substantially the same asset compared with the return of the identical asset.

Do the proposed amendments to the substantially the same characteristics help clarify how those characteristics should be applied? If not, what additional clarifications are needed? Does the implementation guidance related to the substantially the same characteristics in paragraph 860-10-55-35 provide appropriate clarifications related to the characteristics and their application? Is the implementation guidance operable? If not, what additional guidance is needed?

We believe the proposed changes to paragraph 860-10-40-24A are generally helpful but believe the proposed changes to 860-10-55-35(c) are not necessary. We also believe that additional guidance should be provided to clearly indicate that the determination as to whether an asset to be repurchased meets the "substantially the same" characteristics should be performed at inception of the transaction based on the contractual terms of the agreement and not the expected outcomes. The absence of such clarification could ultimately require a "look-back" review for certain transactions, such as those involving the purchase of generic to-be-announced ("TBA") securities, which would not be practicable or meaningful.

ASC 860-10-40-25 states "...expectations of reacquiring the same securities without any contractual commitments...provide no control over the transferred securities". We believe this demonstrates that the determination is to be performed at inception of a transaction based on the contractual terms. However, we also believe that this point could be misinterpreted. For example, when evaluating whether securities to be received have the same or, for mortgage-backed pass-through securities, similar remaining weighted-average maturities that result in approximately the same yield, the proposed guidance in ASC 860-10-55-35(c) states that "This would require consideration of the prepayment characteristics of the security sold as compared with the anticipated prepayment characteristics of the security to be repurchased." The proposed guidance further states that "Historical data and market information on the range of prepayment speeds and market yields for securities with similar characteristics may be considered..." in making this assessment. This could be interpreted to suggest that prepayment characteristics must be evaluated for dollar roll transactions that involve the purchase of generic TBAs. As these contracts do not specify the prepayment characteristics of the TBA securities, the evaluation would have to be performed after completion of the transaction.
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In addition, certain dollar roll transactions often involve sales of specified agency pools of mortgage-backed-securities ("MBS") or TBA securities with the simultaneous purchase of TBAs that settle through the Mortgage-Backed Securities Division ("MBSD") (a division of the Fixed Income Clearing Corporation of the Depository Trust & Clearing Corporation). The MBSD serves as a clearing house for TBA transactions among member counterparties and seeks to assign trades in a manner that provides for optimal net settlement of each counterparty’s open position.

Member firms will typically submit large volumes of sales and purchases to the MBSD and receive securities as settlement only for their net position. As a result, it is not possible to match a specific sale transaction to a specific repurchase transaction. In addition, the MBSD controls the process for determining which securities a member firm will receive in the net settlement process. While securities returned must meet good delivery standards, a member firm does not have control over the securities received or which counterparty will deliver those securities.

Further, the MBSD does not allow stipulations (e.g., weighted average life or weighted average maturity) on trades settled through this centralized process. As a result, there is no commitment to deliver securities that are the same or substantially the same as those transferred. Due to the nature of the MBSD settlement process, the transferor’s inability to control the specific characteristics of securities that will ultimately be returned, and the high volume of transactions conducted, a look-back approach would be operationally challenging and not meaningful for these transactions.

However, dollar roll transactions where there is a specific contractual request for the identical security transferred or have terms (i.e., stipulations) that would lead to substantially the same security transferred being returned are operationally identifiable and typically recorded as secured borrowings. We believe no additional guidance is required to assist in the identification of these transactions and the existing example related to a fast-pay GNMA certificate versus a slow-pay GNMA certificate is sufficient.

Question 6:
The Board decided that for transfers with agreements that both entitle and obligate the transferor to repurchase transferred financial assets that maintain a transferor’s effective control and are accounted for as secured borrowings, the transferor should disclose the gross amount of the total borrowing disaggregated on the basis of the class of financial asset pledged as collateral.

Would this proposed disclosure provide decision-useful information? If not, what disclosures, if any, about these transactions should be required and why?

Similar to our response on scope in Question 1, we do not believe the scope of this disclosure requirement is clear. We also do not track or believe it is necessary to track transactions that fail each separate criterion in 860-10-40-5. If a transaction fails any one of the criteria in 860-10-40-5 it would not be necessary to review the remaining criteria.

Alternatively, the Board could require disclosures solely related to repurchase to maturity transactions or address the disclosure concerns in the Boards Accounting for Financial Instruments: Liquidity and Interest Rate Disclosures project.

We believe the existing disclosure related to collateral under financing transactions is sufficient. Therefore, if the Board proceeds with the requirement in 860-30-50-3(a), we request that the scope of
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this be limited to typical repurchase transactions executed under a GMRA/MRA and stock borrow or lending transactions executed under a Global Master Securities Lending Agreement or Master Securities Lending Agreement. We also request sufficient implementation time be given with an effective date beginning no earlier than for periods commencing on or after January 1, 2014.

Question 7:
The Board decided that for transfers with agreements that both entitle and obligate a transferor to repurchase transferred financial assets that are accounted for as sales and forward repurchase agreements solely because the asset to be reacquired is not substantially the same as the initially transferred asset, the transferor should disclose the carrying amount of assets derecognized during the reporting period.

Would this proposed disclosure provide decision-useful information? If so, should the scope of this proposed disclosure requirement be expanded to explicitly include all transfers of financial assets with agreements to repurchase the transferred assets that are accounted for as sale transactions? What additional information about those transactions, if any, should be disclosed?

It is not clear to us in paragraph 860-30-50-3(b) whether the Board intends for this requirement to apply only to certain dollar roll transactions as we believe was intended, or if this is to be applied more broadly. We are also unclear on what other types of transactions the Board believes exist and therefore request that this disclosure be limited to dollar roll transactions recorded as secured borrowings as discussed below.

The following two examples demonstrate the operational difficulty in meeting the disclosure requirements as currently drafted in the Proposed Update:

A transaction where an entity enters into two independent transactions such as a sale of a specified agency pool of MBS with an underlying guarantee from one government sponsored agency and a contract to buy a TBA with a different underlying guarantor. Due to the different guarantors this transaction would clearly not meet the ‘substantially the same’ criterion and would result in derecognition. As a result, this activity is not currently tracked. We do not believe disclosing all derecognition events would be useful and it would be difficult to identify these for disclosure.

Another example is where there is a significant amount of sale and purchase volume of generic TBAs through the MBSD where the TBA sale may not necessarily be matched or directly linked to an existing asset for derecognition. Also, as discussed in our response to question 5, the MBSD will net positions for ultimate settlement and therefore it is not known at inception if the transaction will result in delivery of a security from the same counterparty. For example, an entity may have $100 of existing agency pools on balance sheet and throughout the month enter into $1,000 of generic TBA sales and $2,000 of generic TBA buys with no specific stipulations resulting in $1,100 of agency pools on balance sheet at the end of the period. It would be operationally challenging to identify which of the $1,000 TBA sales may be directly or coincidentally related to the $100 of existing pools to determine if the existing $100 pools were derecognized or derecognized solely due to not meeting the ‘substantially the same’ criterion.

An alternative to the current disclosure requirement in the Proposed Update would be to disclose transactions that are accounted for as secured borrowings because of the ‘substantially the same’
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criterion for certain dollar roll transactions. We are able to identify dollar roll transactions that are accounted for as secured borrowings on this basis. These transactions typically have a contractual purchase commitment through stipulations and do not transact through the MBSD.

Further, paragraph 860-30-50-3(b) requires the transferor to disclose "...the carrying amount of assets derecognized during the reporting period" (emphasis added). It is unclear whether this disclosure is intended to apply only to open transactions at the end of the reporting period or if it is required to apply to all transactions conducted during the reporting period. If the Board decides to retain this disclosure requirement in the final standard, we recommend that clarification be provided that this relates only to open dollar roll positions at the end of each reporting period. We do not believe providing disclosures for items derecognized during the period and not just those open at the end of the period provide useful or meaningful information to users.

Question 9:
Do you agree with the transition provisions in this proposed Update? If not, why?

We believe all the amendments should be applied prospectively consistent with other past amendments to the derecognition model (e.g., former FASB Statement No. 166 “Accounting for Transfers of Financial Assets an amendment to FASB Statement No. 140”).

If the Board proceeds with the Proposed Update as currently drafted such that the update is applied to activity under paragraph 860-10-65-5(b) by means of a cumulative-effect adjustment then we request that the Board explicitly state in the update that the recognition is an event eligible for the fair value option election in accordance with the existing requirements of ASC 825-10-25-4. We believe the new accounting basis would be sufficient to meet existing eligible election dates under the fair value option in ASC 825-10-25-4. However, making this explicit in the amendment would clarify this point.