BANK OF AMERICA

December 4, 2020

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

Re: Leases: Targeted Improvements (File Reference No. 2020-700)

Dear Ms. Salo:

We appreciate the opportunity to comment on the *Targeted Improvements for Accounting Standards Update to Leases Topic 842* (the Proposal). Bank of America Corporation provides a diverse range of banking and non-banking financial services and products domestically and internationally. As one of the world's largest financial institutions, we are very focused on the efforts of the Financial Accounting Standards Board (the FASB or the Board) to continually improve the Codification.

Bank of America Corporation has a significant lease portfolio, in which it serves as lessor or lessee for over 150,000 lease contracts. Consequently, the Board's attention to providing clarification and improvements to *Leases (Topic 842)*, while maintaining the quality and meaningfulness of the resulting information available to users of the financial statements, is particularly important to us. We appreciate and are supportive of these efforts and have responded in Appendix A to specific questions put forth by the Board in the Proposal.

We welcome the opportunity to express our views in this letter. Should you have any questions, please feel free to contact Chris Ackerlund (980.386.3025) or me (980.387.6061).

Sincerely,

Michael Tovey
Corporate Controller

Cc: Rudolf Bless, Chief Accounting Officer
Chris Ackerlund, Accounting Policy Executive

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Appendix A

The following are our responses to the questions posed by the FASB.

Issue 1: Sales-Type Leases with Variable Lease Payments – Lessor Only

Question 1: *Are the amendments in this proposed Update operable? Why or why not?*

Yes, we believe the amendments are operable and produce results that are aligned with the economics of the underlying leases.

Question 2: *Should a lessor be required to classify and account for a sales-type lease with predominantly variable lease payments that do not depend on a reference index or a rate as an operating lease? Why or why not?*

Yes. The current accounting in Topic 842 that causes certain leases with variable lease payments to be classified as Sales-type leases creates accounting results that are inconsistent with the economics of the leases. Allowing leases that have predominantly variable lease payments to be classified as operating leases will be an accounting improvement as it will better reflect the economics of the underlying leases.

Question 3: *Should "predominant" be the threshold for determining when a lessor should classify a lease with variable payments that do not depend on a reference index or a rate as an operating lease? Alternatively, would another threshold be more appropriate and operable (for example, "substantially all")? Please provide your rationale.*

We believe that "predominant" is the appropriate threshold and is operable. We would not agree with a threshold of substantially all as that would likely not result in the accounting improvements the Proposal is intending to provide.

Question 4: *Would the proposed amendments provide improved decision-useful information for users of financial statements? Why or why not?*

We believe the change improves the alignment of the accounting with the economics of the transactions and, therefore, would improve decision-useful information for the users of the financial statements.

Issue 2: Option to Remeasure Lease Liability – Lessee Only

Question 5: *Are the proposed amendments operable? If not, please explain why.*

Yes, we believe the amendments are operable.

Question 6: *Should a lessee be provided with an option to remeasure lease liabilities solely for a change in a reference index or a rate on which payments are based? Why or why not?*

Yes, we believe having the option reduces operational complexities for certain entities with U.S. GAAP and IFRS reporting requirements, while allowing entities that have implemented lease technology that does not remeasure lease liabilities solely for a reference index or rate change to maintain their current systems. However, for an entity that has made the election to remeasure the lease liability for a change in an index (e.g., consumer price index), we believe the Board should clarify whether the resulting lease liability is determined using the incremental borrowing rate determined at lease commencement or at the date of the remeasurement.

Question 7: *Should a lessee be required to make an entity-wide accounting policy election to remeasure lease liabilities solely for a change in a reference index or a rate on which payments are based? Why or why not? If not, at what level should that accounting policy election be required to be applied?*

Yes, we believe if the election is made that it should be made on an entity-wide level. Doing so addresses the objective of the proposal, which is to ease operational challenges associated with accounting for the same leases differently under U.S. GAAP and IFRS when there is a change in a reference rate or index.

Question 8: *Would the proposed amendments provide improved decision-useful information for users of financial statements? Why or why not?*

Yes, for entities making the election, we believe the lease liability will better represent the lessee's future cash obligations, thus providing users of financial statements with decision-useful information.

Question 9: *Would the comparability of information be significantly affected by the option to remeasure lease liabilities solely for a change in a reference index or a rate on which payments are based?*

No, we do not believe the comparability would be significantly affected, as entities are required to disclose this election under proposed paragraph ASC 842-20-50-10.

Issue 3: Modifications Reducing the Scope of a Lease Contract

Question 10: *Are the proposed amendments operable? Why or why not?*

Yes, we believe the proposed amendments are operable as they ease the complexity associated with modification accounting for remaining lease assets that are not economically affected by the terminating lease assets.

Question 11: *Would the proposed amendments provide improved decision-useful information for users of financial statements? Why or why not?*

Yes. However, we believe that a termination penalty should be assessed for whether it relates to the terminating lease asset or the remaining lease assets. ASC 842-10-25-8B provides clarity on assessing whether an early termination of one or more lease assets affects the remaining lease assets.

ASC 842-10-25-8B(c) reads as follows: "The total payments for the remaining lease component(s) over the lease term are substantially the same as those required by the contract before the effective date of the modification. Those payments shall include any payments made as a result of the modification (<u>for example, termination penalties</u>) but exclude the following payments made by the lessee instead of returning the underlying asset(s) subject to the terminated lease component(s) to the lessor:

1. The purchase of the underlying asset(s) subject to the terminated lease component(s) in accordance with the terms and conditions of the contract or at the fair value of the asset(s) at the date of purchase

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2. A casualty loss associated with the underlying asset(s) subject to the terminated lease component(s) in accordance with the terms and conditions of the contract or at the fair value of the asset(s) at the date of termination."

Making an assumption that the termination penalty relates to the remaining lease assets would almost always result in reassessment of the classification and accounting for the remaining lease assets. We believe that termination payments that are determined to relate to the terminating lease asset should be excluded in the assessment of whether the remaining lease payments for the remaining lease components are substantially the same, similar to the exclusion of purchases of underlying assets as described in ASC 842-10-25-8B(c)(1). We believe this clarification would result in more decision-useful information to the users of the financial statements because the lease right-of-use assets and lease liabilities would more faithfully represent the economics of the lease contract.

Question 12: *Are there other aspects of the modification accounting model in Topic 842 that could be improved without compromising the decision usefulness of the information provided?*

The Board has been very responsive and provided many clarifications to both implementation and ongoing accounting complexities related to Topic 842. Similarly, we respectfully ask the Board to consider making permanent the modification relief provided in the Staff Q&A in response to COVID-19, such that it would apply to similar scenarios where an entity has granted short-term payment deferrals or other lease concessions to lessees or has received lease concessions form a lessor.

This relief produced accounting results and disclosures that were better aligned with the economics of the lease concessions. As the intended impact of the concessions was to provide relief to the lessee and not increase the rights of the lessor or obligations of the lessee, performing modification accounting on these concessions would have produced results that would have been misleading to users of financial statements. We believe that making permanent this relief for similar concessions would enhance the decision-useful information available to investors because it would produce results that more accurately reflect the economics of the respective leases.

Transition

Question 14: *For entities that have adopted Topic 842 by the effective date of a final Update of these proposed amendments, should the proposed amendments be applied either retrospectively or prospectively as described in this proposed Update? Why or why not?*

We agree with the transition requirements as proposed. However, for Issue 2, we believe that an additional option to apply the amendment with modified retrospective application and a cumulative catch-up would facilitate the transition for entities that have already adopted Topic 842 and that have a significant volume of leases with payments based on a reference index or rate.