



September 12, 2018

Ms. Susan M. Cospier
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update—Leases (Topic 842): Narrow-Scope Improvements for Lessors (File Reference Number 2018-260)

Dear Ms. Cospier:

We appreciate the opportunity to comment on the Proposed Accounting Standards Update, *Leases (Topic 842): Narrow-Scope Improvements for Lessor* (the Proposal), which addresses a number of items arising from the implementation of Topic 842. 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 held more than \$30 billion of lease receivables on the balance sheet as of June 30, 2018.

We recognize and are appreciative of the Board's efforts to address the accounting for sales taxes and other similar taxes collected from lessees, certain lessor costs paid directly by lessees (e.g. property taxes and insurance) and recognition of variable payments for contracts with lease and non-lease components. We have responded below to the questions put forth by the Board in the Proposal. Our comments recognize that the guidance set forth in the Proposal improves the accounting for lessors and supports the Board's efforts to provide lessors with implementation relief on amounts thought to be lessor costs paid by lessees.

We respectfully request that the Board provide further relief, as described in our comments below, with a goal to reduce the implementation burden for lessors without reducing decision-useful information to users of a lessor's financial statements. However, we note that even if the Proposal is finalized in its current form, we believe many companies may face challenges in implementing it on a timely basis. We also strongly recommend that the Board limit the application of the amendments in the Proposal to new leases entered into after the adoption date, which is consistent with a number of other Topic 842 implementation proposals. Requiring retrospective application to all leases could have unintended consequences and require significant effort for companies to evaluate current lease data in order to apply the guidance to existing leases by the required adoption date.

See Appendix A for our responses to the questions presented by the Board.

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We appreciate the opportunity to express our views in this letter. Should you have any questions, please feel free to contact Michael Tovey (980.387.6061) or me (980.387.4997).

Sincerely,



John M. James
Senior Vice President and Corporate Controller

cc: Paul Donofrio, Chief Financial Officer
Rudolf Bless, Chief Accounting Officer
Michael Tovey, Accounting Policy Executive

Appendix A

Question 1: *Should a lessor's accounting for sales taxes and other similar taxes collected from lessees be aligned with Topic 606? If not, please explain why.*

Yes. We concur that the accounting for sales taxes and other similar taxes imposed on specific lease revenue-producing transactions that are collected from lessees and remitted to a governmental authority should be aligned with the accounting for similar taxes related to other revenue generating activities under Topic 606. We support providing companies an election to exclude these costs from a lessor's financial statements. We believe this policy election will assist lessors in implementing Topic 842 as the lessor would not have to determine whether certain taxes are lessor or lessee costs.

Question 2: *Is the proposed accounting policy election, as written in this proposed Update, operable? If not, please explain why.*

Yes. We believe the proposed accounting policy election is operable and will allow the majority of lessors to continue their current practices without additional operational burden.

Question 3: *Would the proposed accounting policy election result in a reduction of decision-useful information to users of a lessor's financial statements? If so, please explain why.*

No. We do not believe the proposed accounting policy election would result in a reduction of decision-useful information to users of a lessor's financial statements. Under current accounting, we understand that lessors generally present sales taxes that are collected from a lessee and remitted to a governmental authority net in the financial statements. Banks and other financial institutions generally record lease income within net interest income, which is a key performance metric. Recording sales taxes gross in net interest income and operating expenses would be distortive to our financial results as these amounts do not affect the lease economics. We believe that providing the election would result in an improvement in decision-useful information, permitting the continuation of net treatment, which aligns with how leases are economically evaluated.

Question 4: *Should a lessor's accounting policy election for sales taxes and other similar taxes collected from lessees be applied to new lease contracts only or to all existing and new lease contracts? Please explain your rationale.*

We support limiting the application of the standard to new leases entered into after the adoption of ASC 842.

Question 5: *Should a lessor be required to exclude certain lessor costs paid directly by lessees to third parties on behalf of a lessor as variable payments when the uncertainty in the amount is not expected to ultimately be resolved? If not, please explain why.*

Yes. While we recognize that the Proposal provides lessors with significant implementation relief and appreciate the accounting rationale detailed in paragraphs BC15-19 of the Proposal, we do not believe that certain costs paid – notably property taxes and insurance – should be presented as variable lease payments, regardless of whether the uncertainty is resolved. There is not a substantive economic difference as a result of whether the lessor or the lessee pays these costs or whether the amounts are ultimately resolved, as the costs are ultimately borne by the lessee.

We would like to highlight that lessors will face significant operational challenges in evaluating whether and when an uncertainty has been resolved, even when amounts are billed to the lessor. For example, the legal obligor for

property taxes can vary between the lessor and the lessee based on the individual taxing jurisdiction, and in some cases, the lessor may be billed for taxes by a governmental authority that, by local tax law, are ultimately the responsibility of the lessee. Applying an assumption that the “uncertainty” in taxes is resolved – purely because the lessor is billed for the taxes – would not take into consideration these instances. Additional factors that further complicate the analysis may include, among others, whether the asset is subject to different tax rules based on the physical location of the asset which could be influenced by the lessee as well as whether taxes are billed based on estimates or actual activity. Under the amendments in the Proposal, lessors will still be required to expend substantial resources and costs to evaluate whether these costs are lessor or lessee costs, to assess whether uncertainties have been resolved, and to build accounting and reporting processes to accurately capture and report on these costs within required timelines.

Under current accounting, we understand equipment lessors generally present lessee paid/reimbursed property taxes net in the financial statements. Banks and other financial institutions generally record lease income within net interest income, which is a key performance metric. Requiring these entities to record lease income from reimbursed property taxes within net interest income, with a corresponding property tax expense in operating expenses, for amounts that will generally have no net effect in the income statement and provide no return to the corporation will be distortive and reduce the informational quality of key financial statement metrics across the industry. As currently written in the Proposal, banks that have a greater proportion of lessor-paid property taxes will see an artificial increase in their net interest income, which on balance, would indicate a deterioration in comparability among banks with leasing activity

As a result of the above, we respectfully request that the FASB reconsider providing a practical expedient to allow for these costs – regardless of whether lessee-paid or lessor-paid – to be excluded, consistent with the practical expedient for sales taxes detailed above. Requiring a gross up of these amounts would impose unnecessary strain on lessor companies, and we believe would not result in an increase in useful information for users of our financial statements. When weighed against the expected value, we do not believe the cost is justified.

Question 6: *Are the proposed amendments for the accounting for certain lessor costs operable? If not, please explain why.*

It is unclear whether certain of the proposed amendments will be operable. Recent industry discussions, including large audit firms, have focused on significant interpretational differences regarding the meaning of “readily determinable” and its practical application. As noted in Question 5 above, we believe that the Proposal as written would require significant cost and complexity to implement, and that proving whether costs are readily determinable may undermine the intended benefit. A lessor may be facing an extremely costly data gathering and analysis exercise to ultimately gross up income and expense for amounts that generally do not affect the economics of a lease and ultimately have very little, if any, impact on net income.

If the Board does not provide a practical expedient for property taxes, as outlined in Question 5 above, then we strongly recommend that the Board provide additional guidance and examples to clarify the term “readily determinable” for these types of costs. We would be happy to work with the FASB Staff to provide live fact patterns or work through the consideration of potential examples.

Question 7: *Would the proposed requirement for a lessor to not report certain lessor costs paid directly by a lessee to a third party on behalf of the lessor result in a reduction of decision-useful information to users of a lessor's financial statements? If so, please explain why.*

No. Similar to our response to Questions 3 and 5 above, we do not believe the proposed amendment for a lessor to not report certain lessor costs paid directly by a lessee to a third party on behalf of the lessor would result in a reduction of decision-useful information to users of a lessor's financial statements. Banks and other financial institutions generally record lease income within net interest income which is a key performance metric. Under current accounting, lessors typically do not record a gross up of the income statement for property taxes that are paid directly by the lessee to a third party or billed to the lessor and collected from the lessee. Requiring these entities to record lease income from reimbursed property taxes within net interest income, with a corresponding property tax expense in operating expenses, for amounts that will generally have no net effect in the income statement and, hence, provide no incremental returns to the Corporation will be distortive and reduce the comparability of key financial statement metrics across the industry as noted previously. The proposed requirement would allow companies to continue their current practices, which retains the focus on the key drivers of lease economic performance.

Question 8: *Should the proposed amendment in paragraph 842-10-15-40A to exclude certain lessor costs paid directly by lessees on behalf of a lessor as variable payments be applied to new lease contracts only or to all existing and new lease contracts? Please explain your rationale.*

We support limiting the application of the amendments in the Proposal to only new lease contracts, consistent with other Topic 842 implementation proposals. For existing leases, we present all property taxes paid by the lessee (whether directly to the governmental authority or billed to the Corporation and passed through to the lessee) net in the income statement. We intend to elect the package of practical expedients in transition and to continue our past practice for existing leases unless modified, at which time we would apply the requirements of the new standard and this Proposal. As noted above, we do not believe recording these amounts gross in the income statement provides any additional decision-useful information to users of a lessor's financial statements and believe the cost of implementation and compliance for existing leases would significantly impact the ability to implement the proposal by the adoption date.

Question 9: *Would the proposed amendments clarify the application of paragraph 842-10-15-40? If not, please explain why.*

Yes.

Question 10: *Are the proposed amendments for the accounting for certain variable payments for contracts with lease and nonlease components operable? If not, please explain why.*

Yes.

Question 11: *How much time would be needed to implement the amendments in this proposed Update for an entity that early adopts Update 2016-02 before these 6 proposed amendments are finalized? What transition method and transition disclosures should those entities be required to apply (provide)? Please explain your reasoning.*

We are not an early adopter and, therefore, have not commented.

Question 12: *Should the effective date for the amendments in this proposed Update be aligned with that of Update 2016-02? If not, please explain why.*

We believe that the effective dates for the Proposal should be aligned with those of Topic 842. However, as described in our responses above, we note that even if the Proposal is finalized in its current form, we believe many companies may face challenges in implementing it on a timely basis. We also strongly recommend that the Board limit the application of the amendments in the Proposal to new leases entered into after the adoption date, which is consistent with a number of other Topic 842 implementation proposals. Requiring retrospective application to all leases could have unintended consequences and require significant effort for companies to evaluate current lease data in order to apply the guidance to existing leases by the required adoption date.