BANK OF AMERICA

July 5, 2021

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

Re: File Reference No. 2021-002, Exposure Draft, Derivatives and Hedging (Topic 815)

Dear Ms. Salo:

We appreciate the Financial Accounting Standards Board's (the "Board's") continued efforts to further improve hedge accounting to better portray the economic results of an entity's risk management activities in its financial statements. Bank of America Corporation (the "Corporation") currently employs last of layer hedging relationships in our hedge program today and is strongly supportive of the multiple layer model included in the Proposed Accounting Standards Update, Derivatives and Hedging (Topic 815) Fair Value Hedging–Portfolio Layer Method (the "Proposed Update"). As described in our responses to the questions put forth by the Board (refer to Appendix A), we have noted a few areas of improvement which we believe further advances the objective of this project. We think certain adjustments to the scope of the portfolio layer method should be made to include non-prepayable assets. This change will further streamline entities' hedge programs by decreasing the number of outstanding hedge pools, which will decrease an entity's hedge program costs and result in a better reflection of the risk management opportunities associated with these hedge strategies. Additionally, we would encourage the Board to align the dedesignation framework for anticipated and actual breaches. To minimize actual breaches due to forecasting variances, we are asking the Board to consider an alternative approach that is a similar method to the "pattern of missed" forecasts concept in the current cash flow hedging model that stakeholders are familiar with today.

We appreciate the opportunity to express our views on the Proposed Update and would welcome further discussion with the Board and its staff. Should you have any questions regarding our views in this letter, please feel free to contact Christopher Ackerlund (980.386.3025) or me (980.387.6061).

Sincerely,

Michael Tovey
Senior Vice President and Corporate Controller

cc: Rudolf Bless, Chief Accounting Officer
Christopher Ackerlund, Accounting Policy Executive

Appendix A

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

Question 1–Operability: *Are the amendments in this proposed Update operable and auditable? If not, which proposed amendment or amendments pose operability or auditability issues and why?*

We believe that the proposed amendments are generally operable and make both beneficial and necessary improvements to the current last of layer model in ASC 815.

Question 2–Risk Management: *As proposed, would the multiple-layer model align with entities risk management objectives? Please explain why or why not.*

We believe that proposed multiple-layer model aligns with an entities risk management objectives. A financial services entity will generally consider its interest rate risk from a macro perspective and then utilize different hedge accounting strategies to assist in meeting its interest rate risk objectives. When considering a portfolio of prepayable financial assets and the amount of time that loans, or layers, within the portfolio would be outstanding, the single layer method essentially required an entity to choose between hedging a larger balance for short period of time or a small balance for a long period of time. As a result, the single layer method is somewhat limiting. On the other hand, the multiple-layer method will allow entities to utilize a portfolio to hedge balances over both a short and long period of time, which better aligns with an entities interest rate risk management objectives.

Question 3–Scope: *Do you agree with the Board's decision to limit the scope of the types of instruments eligible for portfolio layer method hedging to prepayable financial assets or one or more beneficial interests secured by a portfolio of prepayable financial instruments? Please explain why or why not.*

Because the hedge criteria for the portfolio layer method requires all assets within the closed portfolio to have a contractual maturity date that is on or after the end of the earliest-ending hedge period associated with the closed portfolio, it does not seem there is a conceptual basis to limit the portfolio to prepayable assets. Instead, a better alternative is that as long as the contractual maturity criteria is met, the financial asset should be eligible for the portfolio layer method hedging, regardless as to whether or not it is prepayable.

We do not believe a distinction is needed to between prepayable and non-prepayable financial assets. Since the underlying framework for the portfolio layer method is the ability to hedge a stated amount of notional for changes in the benchmark interest rate for a designated period of time, the financial assets are essentially treated as non-prepayable in the hedge strategy. Therefore, allowing both prepayable and non-prepayable financial assets within the portfolio aligns with the interest rate risk management objectives of the strategy. Importantly, quantitatively and qualitatively, fixed rate prepayable and non-prepayable assets would meet the similar asset test under the proposed model for the specific period hedged. Therefore, we recommend that as long as the closed portfolio is able to support the stated notional amount hedged at each period, both prepayable and non-prepayable financial assets should be eligible to be included in a portfolio in applying the portfolio layer method.

In addition to the conceptual argument, the incremental costs of implementing the portfolio layer strategy would be reduced. By allowing both prepayable and non-prepayable financial assets, entities will be able to simplify their hedge programs by reducing the number of outstanding hedged pools. As noted previously, financial institutions generally manage their interest rate risk at a macro level and then utilize different hedging strategies to meet their interest rate risk management objectives. The ability to include both prepayable and non-prepayable financial assets in a closed portfolio will allow for more efficient hedge accounting programs that align with the Corporation's interest rate risk management objectives and remain within the confines of U.S GAAP's prohibition on macro hedging.

Question 4–Dedesignation Sequencing: *Do you agree with the Board's proposed amendments on hedge dedesignation sequencing under the multiple- layer model? Please explain why or why not.*

While we agree with the proposed amendments regarding anticipated breaches and voluntary dedesignations, we believe the proposed framework for addressing actual breaches of hedge layers could be improved by simply aligning the dedesignation requirements under an actual breach to the requirements under an anticipated breach. This would decrease the operational risk and earnings mismatch of dedesignating an entire layer and then redesignating the portion of the breached layer that is still expected to remain outstanding.

We believe entities that will apply this hedge strategy will invariably have sophisticated hedging programs, and therefore, have developed effective methods and abilities to adequately forecast prepayments and defaults and have or will have appropriate procedures to monitor, and adjust when needed, their expected portfolio layer balances to the designated hedge amounts. Therefore, entities will have reacted to anticipated breaches well in advance of actual breaches. Where this may not apply is those rare events or circumstances that would likely involve unpredictable idiosyncratic events that are one time (or period) in nature. In these events or circumstances, we would still not expect the entire portfolio is prepaid. Instead, a portion of the layers would still be expected to be outstanding over the designated hedge period where an entity may still want to hedge that portion of the layer. Under the Board's proposed amendments, an earnings mismatch may and likely will occur after an actual breach and a portion where an entity decided to continue hedging the portion of the breached layer that is still expected to remain outstanding for the original hedged period, albeit in a new designation. In this scenario and under the proposed amendment, an entity would be required to dedesignate the entire layer and then redesignate the portion of the layer they believe will still be outstanding. In the dedesignation, the basis adjustments associated with the de-designated amount would have been allocated to assets in the closed portfolio that supported the breached layer with the basis adjustments then amortized into earnings, consistent with other premiums and discounts associated with the respective assets, over the remaining life of the financial asset. On the other hand, the entity may still consider using the derivative that was hedging the breached layer in the newly designated hedge by partially closing it out so that it aligns with the new hedged amount. At the inception of this new hedge relationship, the derivative will have a fair value equal to the basis adjustment that was allocated to the financial assets which will then pull to zero over its remaining life and be recognized in earnings. While the ultimate impact is zero, a timing mismatch of recognition in earnings that is not representative of the underlying economics will occur. Importantly, the ability to dedesignate under an anticipated breach avoids this scenario and results in accounting that is aligned with the interest rate risk management objective. In other words, if a portion of the hedge is allowed to continue to the end of the hedge period, the basis adjustment and derivative fair value will revert to zero without an impact to earnings. We believe that by having the same rules for actual and anticipated breaches results in a better accounting model.

Another potential in an actual breach is incurring costs with closing out a derivative. Since the basis adjustments attributed to the new hedged layer are based on the benchmark rate at dedesignation and have an inception date fair value of zero whereas the derivative's fair value is not zero, this misalignment may result in ineffectiveness in the redesignated layer such that there is potential for the hedge relationship to fail the highly effective criteria at some future point in time. As a precaution, entities may be compelled to close out the original derivative and enter into a new derivative that would results in costs that could be avoidable by adopting our recommendation.

Therefore, for the reasons noted above, allowing entities to partially dedesignate selected hedge layers until the breach is remediated, assuming that the remaining layers outstanding are sufficiently supported by the closed portfolio (consistent with an anticipated breach), is an improvement to the proposed amendments. As a protection against entities becoming imprudent in their monitoring of their expected portfolio layer balances, the guidance similar to cash flow hedging in ASC 815-30-40-5 could be added where if an entity exhibits a pattern of actually breaching a layer, it should call into question both (a) an entity's ability to accurately anticipate the stated amount(s) of the closed portfolio that is not expected to be affected by prepayments, defaults, or other factors affecting the timing and amount of cash flows for the period hedged and (b) the propriety of using hedge accounting in the future for similar hedged transactions.

Question 5–Basis Adjustments: *Do you agree with the Board's proposed amendments on accounting for basis adjustments and disclosure of those basis adjustments in disclosures required by other areas of GAAP outside hedge accounting? Please explain why or why not.*

We agree with the proposed amendments with regards to the accounting and disclosure of portfolio layer method basis adjustments.

Question 6–"Follow the Asset" Method: *In the case of a breach, do the expected costs of identifying which assets in the closed portfolio that caused the breach justify the expected benefits of aligning the derecognition guidance with other Topics in GAAP? Please explain why or why not.*

We do not believe that the cost to support the mechanics of the "Follow the Asset" method is justified. The time and effort to determine the actual assets that caused the breach would be excessive with the only purpose to proscribe the income statement geography for the applicable basis adjustments that should be immediately recognized in earnings. This cost would not outweigh the benefits. Instead, we believe entities should be able to elect an accounting policy to either "Follow the Asset" or report the amount in interest income. While the latter election does not align to the derecognition guidance with other Topics in GAAP, the amount that would be reported in interest income would be applicable to periods when the hedge was effective and arguably is related to the effective interest rate of the financial asset over the hedged period. This election is somewhat akin to the options provided in ASC 326, *Current Expected Credit Losses,* for interest receivable where an entity can make an election that results in the write-off of an uncollectible interest receivable through either interest income or provision for credit losses, depending on the policy election. If material, disclosure of the amount could be required to avoid any investor confusion.

Question 7–Certain Private Companies and Not-for-Profit Entities: *Would any of the proposed amendments require special consideration for private companies that are not financial institutions and not-for-profit entities (except for not-for-profit entities that have issued, or are a conduit bond obligor for, securities that are traded, listed, or quoted on an exchange or an over-the-counter market)? If so, which proposed amendment or amendments would require special consideration and why?*

As a public benefit entity, the Corporation would defer to private and not-for-profit entities on whether any incremental consideration is needed. We believe the proposed amendments should be available to any type of entity that manages interest rate risk using the portfolio layer method.

Question 8–Transition: *Do you agree with the proposed transition guidance? Please explain why or why not.*

Yes. We agree with the transition guidance proposed by the Board so long as the final guidance provides for the incremental ability to early-adopt the proposed amendments.

Question 9–Implementation: *How much time would be needed to implement the proposed amendments? Should the amount of time needed to implement the proposed amendments by entities other than public business entities be different from the amount of time needed by public business entities? Please explain your response.*

We generally believe the proposed amendments would not require a significant amount of time and effort as many entities wishing to utilize this method have already implemented a last of layer program and that only incremental technology efforts would be needed. If early adoption is permitted, we would expect to operationalize the multi-layer hedging guidance soon after issuance.

As it pertains to the proposed transition election to reclassify debt securities classified as held-to-maturity to available-for-sale so long as they are eligible to be hedged under the portfolio layer method, we note that additional flexibility in the timing of when such election may be made needed to operationalize the transfer. The proposed amendments in ASC 815-20-65-6(i)(1) indicate that reclassification elections shall be determined at the date of adoption. We encourage the Board to allow the reclassification election to be made within a short time period from the date of adoption, for example, within 90 days of the election. The transition to held-to-maturity debt securities into the portfolio layer method may not be operable in an all at once approach as the ability to designate the transferred securities in a portfolio layer strategy may be constricted depending on the amount of securities reclassified. Additionally, should an entity immediately wish to hedge the securities transferred, a number of trading days may be needed depending on the amount transferred to transact enough derivative notional to cover the transferred securities without adversely impacting the pricing of the derivatives.