BANK OF AMERICA

November 14, 2021

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

Re: File Reference No. 2021-005, Exposure Draft, Fair Value Measurement (Topic 820)

Dear Ms. Salo:

We appreciate the Financial Accounting Standards Board's (the "Board") effort to both identify and eliminate areas of U.S. GAAP where diversity in practice exists. 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 focused on the efforts of the Board and its effort to improve the guidance in ASC Topic 820, *Fair Value Measurement*.

Concerning the Proposed Accounting Standards Update ("Proposed ASU"), we disagree with the Board's conclusion that all entity-specific contractual sale restrictions should be precluded when determining fair value. Consistent with the alternative view presented by certain Board members in the Basis for Conclusions, we believe that incorporating the effects of a contractual sale restriction into an equity security's fair value would provide better decision useful information to users about an entity's actual economic position.

We appreciate the opportunity to express our views on the Proposed ASU 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–Restriction Type: *Do you agree with the Board's decision on scope to include all contractual restrictions that prohibit the sale of an equity security? Please explain why or why not.*

We agree with the Board's decision to scope in all contractual restrictions into the proposed ASU. Given the possible diversity in how these restrictions arise or how they are documented, we do not see a justification for limiting the scope when all variations of such contractual restrictions ultimately result in the holder of an equity security being prevented from transferring their position for a given period of time.

Question 2–Measurement: *Do you agree with the Board's decision that a contractual restriction prohibiting the sale of an equity security is not considered part of the unit of account of the equity security and, therefore, should not be considered in measuring fair value? Alternatively, should the Board amend the guidance in Topic 820 (or elsewhere in GAAP) such that contractual sale restrictions would be required to be considered in determining fair value?*

We disagree with the decision to preclude contractual restrictions from being incorporated into an equity security's fair value. We believe that by ignoring contractual restrictions the Board is creating an unjustified divergence between what some valuation professionals refer to as an instrument's "accounting fair value" from its true economic value. In this respect, we do not believe that an entity holding a contractually restricted position is subject to the same liquidity and volatility risk and a similar valuation to an unrestricted security is not a proper representation of the fair value of the security. In scenarios where a transfer of a contractually restricted occurs, those transfers are facilitated through a bilateral negotiation of relevant parties where the exit price incorporates the release or transfer of the contractual restriction of the security. As a result, a valuation of the contractually restricted security using the unrestricted exchange price multiplied by quantity overstates the exit price of the security. Therefore, the Board should amend the guidance in Topic 820 such that contractual sale restrictions are required to be considered in determining fair value.

In consideration as to whether a contractual restriction is part of the security's unit of account, we believe that the most common contractual restrictions have a direct impact on the market pricing which evidences that their impact is broader than being just a characteristic of the reporting entity. This was acknowledged in the Board's research on the market effect of underwriter lock-ups. As noted in paragraph BC19, because of the market's awareness of the limited supply during the lock-up period, unrestricted shares typically trade at a premium as evidenced by the decline in price that generally occurs in the days leading up to a restriction expiration. We believe this provides robust economic evidence that supports including contractual restrictions as part of the security's unit of account.

Question 3–Entity Type: *Should all types of entities use the same unit of account when measuring the fair value of an equity security subject to a contractual sale restriction, or should certain types of entities (for example, investment companies, broker dealers, and pension plan financial statements) have a different unit of account? Please explain your response.*

Consistent with the original intent of the Proposed ASU, we believe the Board should be focused on reducing diversity in the application of U.S. GAAP. While the use of fair value accounting may differ across specialized industries, we do not believe that the core framework for determining fair value should be different.

Question 4–Disclosures: *Would qualitative or quantitative disclosures (for example, describing the nature of a contractual sale restriction on an equity security and the related amount recognized on the balance sheet) help users in understanding the effects of a contractual restriction on the sale of an equity security held by a reporting* *entity? Please explain why or why not. For reporting entities, what costs would be incurred to disclose that information?*

We do not believe that there is need for additional disclosure beyond the extensive requirements already established by ASC 820. Contractual sale restrictions are prevalent and widely understood in equity securities markets.

Question 5–Transition: *Do you agree with the transition guidance in this proposed Update? Please explain why or why not.*

We agree with the proposed transition guidance such that any changes to the fair value measurement guidance would be recognized prospectively in earnings consistent with other changes in accounting estimates.

Question 6–Implementation: *How much time would be necessary 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.*

As a public business entity, we would not expect that a significant amount of time would be necessary to implement the proposed ASU. If the Board decided to include contractual sale restrictions in the determination of fair value consistent with our recommendation above, we would not expect the change to be operationally burdensome for impacted entities given the existence of established valuation methodologies for taking such into account.

Question 7–Clarity and Operability: *Do you agree that the proposed amendments and, in particular, the definition of a restricted security provide the necessary clarity to resolve existing diversity in practice? Please explain why or why not. Are the proposed amendments operable and auditable? If not, which proposed amendment or amendments pose operability or auditability issues and why?*

We believe that the Proposed ASU would resolve the diversity in practice that exists today regarding underwriter lock-up provisions; however, we believe there will continue to be diversity due to various transfer restrictions that exist beyond this common example. For example, certain foreign jurisdictions require a holding period on shares purchased by foreign investors. In this scenario, it is unclear whether the current framework would consider a government restriction as a characteristic of the security, which may result in multiple interpretations. Overall, we do not believe all transfer restrictions will cleanly fall within the definitions provided by the Proposed ASU and continued diversity will result.

Outside of the questions noted above, we believe that if the Board were to further consider our proposal above, the interaction of the Proposed ASU and the definition of readily determinable fair value would need to be updated. Per the Master Glossary, restricted stock meets that definition of readily determinable fair value if the restriction terminates within one year. If contractual sale restrictions were to be recognized as part of an equity security's fair value, we do not believe these restrictions should be considered when determining if the alternative measurement accounting is eligible to those securities with restrictions greater than one year. We believe the Board should eliminate the "if the restriction expires within one year" from the definition of readily determinable fair value definition and add, "absent any restrictions, there are sales prices or bid-and-asked quotations currently available on a securities exchange registered with the U.S. Securities and Exchange Commission (SEC) or in the over-the-counter market, provided that those prices or quotations for the over-the-counter market are publicly reported by the National Association of Securities Dealers Automated Quotations systems or by OTC Markets Group Inc." Because the fair value of a transfer restriction is generally insignificant to the overall fair value of the security, this will result in a better representation of a security's fair value.