

March 13, 2009

Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Consultative Documents: Market Risk

Dear Ladies and Gentlemen:

Bank of America Corporation (Bank of America) appreciates the opportunity to comment on the Basel Committee on Banking Supervision's Consultative Documents entitled "Revisions to the Basel II market risk framework" and "Guidelines for Computing Capital for Incremental Risk in the Trading Book" (both issued for comment by 13 March 2009). Bank of America completed its acquisition of Merrill Lynch & Co. Inc. on January 1, 2009. As of the date of the acquisition, Bank of America with total assets of \$2,505 billion as the sole shareholder of Bank of America, N.A. and Merrill Lynch & Co. Inc. had full-service consumer and commercial operations in 50 states and the District of Columbia. Bank of America provides banking, investing, corporate and investment banking services and financial products to individuals and businesses across the United States of America and around the world.

Bank of America broadly supports the Basel Committee's efforts to strengthen the market risk regulatory capital framework by ensuring that capital reflects the broad range of potential risks, and that capital is sufficient to withstand large systemic shocks. We accordingly support the Committee's modified proposal to institute an incremental risk charge (IRC) measure that would capture the default and migration risks of certain credit exposures. At the same time, we support the new proposal's shift toward generating more capital from the value-at-risk calculation rather than from the IRC; we believe this better reflects the nature of the risks which have been primarily responsible for the large losses recently experienced by banking organizations. Finally, we also appreciate the other changes that the Committee has made to its previous proposal in response to industry comments, for example, regarding validation requirements for the IRC. However, we continue to have concerns about the Committee's current proposal.

A basic objective of the market risk framework should be to improve the linkage between a financial institution's capital requirements and its risk. We recognize that since mid-2007, financial institutions have experienced large trading losses which were not adequately captured in their VaR models. We believe the appropriate response is therefore for institutions to improve their VaR models in both key dimensions: (1) Accurate capture of the full set of risk factors that underlie their exposures, and (2) calibration to a full range of market history that includes the most extreme scenarios. However, some of the proposed changes in the framework would effectively just scale up the capital requirements in current VaR models. And in the case of securitizations, the proposed changes would remove the exposures from the modeled risk measurements altogether, and apply capital requirements on the basis of a ratings-based standardized charge. We believe that these kinds of changes are not consistent with the direction in which the framework should be moving, and in some cases, represent a significant step backward.

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Bank of America is a member of the International Swaps and Derivatives Association (ISDA), the Institute of International Finance (IIF), and the London Investment Banking Association (LIBA), and has participated in the preparation of their joint comment letter. We endorse the ISDA/IIF/LIBA comment letter, but would like to take this opportunity to further emphasize some points of particular importance to us.

- **Double Counting.** The proposal requires that capital be calculated as the sum of components based on the standard value-at-risk measure and on a stressed value-at-risk measure calibrated to historical data from a period of significant financial stress. However, if the historical period used in the stressed value-at-risk calculation is part of the historical period used in the standard value-at-risk, the stressed historical period would effectively be driving the results of both calculations. Since capital would be calculated as the sum of two components both of which are driven by the same highly volatile historical period, the capital requirement is likely to be highly punitive. To avoid such double-counting, the stressed value-at-risk should be treated as a floor on the value-at-risk used for calculating capital, not as an additional component.
- **Securitized Products.** The proposal would require that capital for all securitized products must be based on the standardized charge. This presumably includes not only securitizations of consumer receivables (e.g., ABS on mortgages or credit card receivables), but also correlation books, i.e., CDO tranches of corporate CDS. We believe this is unnecessarily restrictive. With the development of the index tranche market, the preponderance of the risks in correlation books can now be benchmarked to liquid market prices. For example, base correlations, which are a key driver of the value of corporate CDO tranches, can now be obtained on a daily basis for various tranches of the CDX and iTraxx indices.

We understand that securitized products have generated large losses for financial institutions, and it is appropriate to increase the amounts of capital allocated to them. But we should avoid painting this product category with too broad a brush, as some of these products are much more amenable to VaR-based risk measurement. Bank of America, along with other banks, have devoted considerable efforts toward developing value-at-risk and specific risk models that capture the full range of risks in products such as those traded in correlation books. These risks include, in particular, linear and non-linear impacts of credit spread changes, defaults, correlation changes, cash/synthetic basis, and index vs. single-name basis. We believe that banks should continue to be allowed to develop and use such models for calculating capital, subject of course to supervisory approval.

Validation. For purposes of determining a “plus” factor to the capital multiplication factor, the proposal specifies that the factor be determined by backtesting results based only on value-at-risk, and not stressed value-at-risk. We believe that a plus factor determined this way does not represent a meaningful assessment of model adequacy. Our experience since mid-2007 has been that the vast majority of backtesting exceptions have been due to sharply increasing market volatility that is higher than the volatility reflected in the historical observation period. Relatively few exceptions have been due to inadequate capture of risk factors in the model. The large number of exceptions experienced is an inevitable consequence of using a historically calibrated model during a period of increasing market volatility, and does not reflect any fundamental inadequacy in the model. Since the stressed value-at-risk effectively represents a period of high market volatility, backtests based on the stressed value-at-risk would isolate the impact of model inadequacy, and should therefore be used to determine the plus factor.

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- **Valuation.** The proposed rules continue to require banks to adjust valuations to reflect the lack of liquidity of certain positions. This is inconsistent with the financial accounting standards produced by the International Accounting Standards Board, which do not permit such adjustments. We do not believe it will be beneficial, particularly in regard to reporting transparency, to have different valuations for accounting and regulatory purposes.
- **Pillar I Consistency.** For certain credit exposures, the proposal now requires that capital be based on the sum of (1) an IRC charge calibrated to a 99.9% confidence level over a one year horizon, (2) a value-at-risk charge, and (3) a stressed value-at-risk charge. Since banking book charges for similar positions would be comparable to the IRC charge alone, this raises the possibility that a position in the trading book may be allocated much more capital than a similar position in the banking book. This could discourage banks from applying the risk management disciplines that are appropriate in a mark-to-market environment.

Summary

Bank of America continues to support the objective of updating the market risk capital standards to better reflect the evolution of the markets, particularly in light of events since mid-2007. It is important, however, to ensure that any proposal continues to encourage banks to develop models that comprehensively reflect the full range of risks in their products, and does not impose distortions between the trading and banking books.

We would be happy to discuss our views in greater detail, or to discuss any new ideas that the Agencies wish to pursue. In that regard, please contact Jeffrey Katz, our Senior Vice President for Market Risk Analytics and Operations, at (646) 855-2704 or John S. Walter, our Senior Vice President for Risk & Capital Analysis, at (415) 913-2706.

Sincerely,



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