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April 16, 2010

VIA E-MAIL: **baselcommittee@bis.org**

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

Re: Basel Committee on Banking Supervision, Consultative Document "Strengthening the Resilience of the Banking Sector", December 2009

Dear Messrs. and Mmes.:

Bank of America Corporation (together with its affiliates, "Bank of America") appreciates the opportunity to comment on the Basel Committee on Banking Supervision's Consultative Document entitled "Strengthening the Resilience of the Banking Sector" published on December 16, 2009. Bank of America, with total assets over $2.2 trillion at December 31, 2009 is the sole shareholder of Bank of America, N.A. and Merrill Lynch & Co. Inc., has full-service consumer and commercial operations in 50 states and the District of Columbia. We serve clients in more than 150 countries worldwide. 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.

The unprecedented nature of the recent economic turmoil and its consequences for many financial institutions has illustrated the importance of capital regulation, risk management and liquidity risk management. We remain very supportive of efforts to strengthen and harmonize global capital regulations and promote a more resilient banking sector. We commend the goal of the Basel Committee on Banking Supervision (the "Committee") of improving the banking sector's ability to absorb shocks arising from financial and economic stress as well as reducing the risk and impact to the real economy of these shocks. Many proposals of the Committee contained in the "Strengthening the Resilience of the Banking Sector" Consultative Document (the "Consultative Document") support and reinforce efforts currently being undertaken to improve risk and capital management capabilities across the industry.

Bank of America is a member of the International Swaps and Derivatives Association ("ISDA"), the Association for Financial Markets in Europe ("AFME"), the British Bankers Association, ("BBA"), the Institute of International Finance ("IIF"), the Risk Management Association ("RMA"), the Clearing House Association and the American Bankers Association ("ABA"), and has participated in the preparation of their comment letters. With some minor differences, we endorse the joint ISDA/AFME/BBA, the IIF, the RMA, the Clearing House and the ABA comment letters. These letters contain detailed responses to many of the individual recommendations listed in the Consultative Document and therefore are not repeated in this letter.

We highlight the most critical areas associated with the Consultative Document below. We ask that the Committee consider applying the most dedicated focus to the following areas as it works to improve the consistency and quality of capital, strengthen risk coverage of the capital framework, introduce a supplementary international leverage ratio and adopt measures to limit pro-cyclicality:

- *Impact to the Banking Sector and Real Economy.* While each of the conservative elements within the proposal may have some merit in isolation, the cumulative impact of these initiatives will be deep and far-reaching. We do not believe the aggregate impact has been adequately explored and are concerned that the unintended consequences may be significant for credit availability, the cost of borrowing, employment and economic growth. We believe a balanced, coordinated approach over a longer comment and calibration period will be necessary to minimize unintended consequences and market disruptions.

- *Definition of Capital and Treatment of Trust Preferred Securities.* The Consultative Document's definition of Tier 1 capital is too narrow. As currently specified, the eligibility criteria in the proposal will raise competitive equity issues for banking organizations located in the United States. It would limit the use of hybrid instruments, including trust preferred securities with demonstrated loss absorption capacity, and would reduce the flexibility of banking organizations to raise capital in the most efficient manner.

- *Punitive and Pro-cyclical Capital Adjustments.* The proposed capital adjustments for unrealized gains and losses, mortgage servicing rights, financial investments, and deferred tax assets are too punitive, overly rigid and not sufficiently risk sensitive. We recommend the Committee adopt a more graduated, risk-based approach that applies a combination of limits and RWA treatments based on a rigorous case-by-case review of economic risk and potential impact to the industry.

- *Technical Aspects of Risk Coverage Proposals.* We have significant concerns with regard to the proposed solution to capture risks associated with credit valuation adjustments. We believe that capturing this risk within the existing trading book internal models approach would be much more effective and accurate. We believe the bond-equivalent approach proposed by the Committee has a number of deficiencies that must be addressed before it would be suitable for determining regulatory capital.

- *Application of the Securitization Framework to Trading Assets.* We urge the Committee to develop a more graduated approach for credit assessment reflecting the volumes, holding periods and other features of trading portfolios. We are encouraged that the Committee intends to undertake a review of the securitization framework and hope this will include the role of the ratings based approach, the treatment of credit risk mitigation and the treatment of securitization exposures carried at a deep discount.

- *Definitions of Exposure for the Leverage Ratio.* We support a globally consistent backstop leverage ratio as a component of Pillar 1 in the interest of the stability of the sector and a level playing field across jurisdictions. As a backstop measure to control leverage, the ratio should be designed to ensure it does not undermine the risk-based capital framework. We urge the Committee to reconsider the methodological choices for the denominator, including the treatment of netting and use of notional amounts for CDS and off balance sheet exposures. We believe these choices are excessively punitive and disproportionate to the goals of implementing a non-risk-based measure of leverage and achieving international comparability.

- *Measures to Reduce Pro-Cyclicality.* We are very supportive of efforts to reduce the cyclicality of the Basel II framework. We support efforts to align provisioning requirements with expected loss and the notion that banks should build capital buffers that can be drawn down as losses are incurred in a stressed environment. We believe capital conservation measures would be more effective under a Pillar 2 approach focused on the unique situation of the bank and proactive dialogue between the firm and its primary supervisors. We urge the Committee to avoid explicit capital triggers that would restrict a bank's ability to distribute earnings to shareholders and compensate employees.

Impact to the Banking Sector and Overall Economy

We are concerned about the potential impact of the recommendations on the banking sector and the overall economy, particularly in conjunction with other actual and proposed regulatory, legislative and accounting changes. While conservative elements within each proposal may have some merit in isolation, the cumulative impact of these initiatives will be deep and far-reaching. We do not believe the aggregate impact has been adequately explored and are concerned that the unintended consequences may be significant.

An increase in capital requirements through more restrictive regulatory capital definitions, the consolidation of off-balance sheet exposures as a result of recent accounting changes, expanded definitions of exposure for the leverage ratio, and increased liquidity requirements will reduce banks' ability to perform their important intermediation function and provide capital to the broader economy. In combination, the proposals will inevitably reduce credit availability, increase the cost of borrowing and lead to slower economic growth. Given the fragile nature of the global recovery, we urge the Committee to balance greater capital and liquidity requirements needed to make the system stronger and safer, on the one hand, against the risk of inappropriately restricting the flow of credit that is critical to economic growth, on the other.

Additionally, any requirements imposed by the Consultative Document would apply only to regulated institutions, and thus would not reach lending or other credit intermediation organizations operating outside of the regulated sphere. As a result, banking organizations might be at a competitive disadvantage relative to non-regulated companies that would not have to comply with any new, higher capital requirements.

In view of the potential significance of the cumulative impact, we request the Committee provide the industry an opportunity to better contribute towards a robust, comparable and more comprehensive impact assessment by extending the QIS study and calibration effort to the end of 2010. This should include not only the bottom-up assessment but also a top-down evaluation of the effect the combined changes will have on credit availability, the cost of credit, employment and the economy. We believe that, due to the timing of the proposals and the short response period relative to their scale, the QIS will not fully reflect the impact on US banks. Most affected US institutions are still in the process of implementing Basel II. Comparisons based on Basel I rules or bank's best efforts while their Basel II implementations are in flux could compromise the integrity of the QIS and result in a skewed calibration of the capital requirements.

Additionally, we request the Committee publish a second, more comprehensive consultative paper including proposed calibration levels after completion of the QIS, allowing a comment period congruent with the significance of its impact (120 days minimum). While this may delay the ultimate adoption of the new rules, the two year transition period contemplated by the Committee for implementation is too brief given the current state of the economy and the magnitude of the effort.

We believe the standards suggested by the Consultative Document will have enormous implications on traditional retail and commercial banking businesses and broader market ramifications that are not yet fully understood. Moreover, this framework must be developed in light of the need to coordinate with ongoing and foreseeable regulatory, legislative, and like initiatives. It will require close and careful coordination. We respectfully suggest that the Committee consider the cumulative impact of the Consultative Document together with all other proposals over a relatively long time horizon. We believe a balanced, coordinated approach will be most likely to minimize unintended consequences and market disruptions.

The Definition of Capital and Treatment of Trust Preferred Securities

We strongly support the goal of consistent global capital definitions, harmonized capital adjustments and minimum requirements. However, to maintain the level playing field, it will be critical to address local accounting, taxation, and other regulatory rules through some degree of national discretion. We have significant concerns with regard to the specific proposals for Tier 1 eligibility and the binary and punitive nature of the proposed capital adjustments. We recommend the Committee modify the eligibility criteria to include trust preferred structures to recognize their demonstrated loss absorption capacity. We also recommend the committee adopt a more graduated and risk-sensitive approach to determining adjustments to capital.

The proposed rules cannot be applied without distorting international competitive equity. Convergence of accounting standards is a prerequisite to harmonizing capital rules across jurisdictions. A rigorous definition of capital applied to jurisdictions with significant variances in accounting standards, tax laws and accounting and banking regulation will likely undermine consistency in application, causing inequities for comparable businesses across countries. We understand the Committee's goal of minimizing national discretion but urge caution in extending this principle to the point that it exacerbates the impact of differing accounting and tax treatments rather than facilitates comparisons of capital adequacy. Until accounting standards are aligned, a degree of national discretion will be required to ensure the rules as applied are broadly comparable across jurisdictions.

We support the emphasis on common equity comprising a significant majority of Tier 1. This is consistent with current US rules, the use of Tier 1 Common in the US Supervisory Capital Assessment Program and the subsequent informal adoption of Tier 1 Common across the major US banks. While the dominant component of Tier 1 capital should be common equity, the Committee should permit a reasonable portion of the Tier 1 component to consist of non-cumulative perpetual preferred stock and other tax-deductible structures subject to stringent qualification requirements and limits on the absolute percentage of these instruments relative to Tier 1.

We agree with the principle that non-common Tier 1 must have discretionary coupons to avoid payment default and bear losses while the firm remains a going concern. The criteria outlined for inclusion in Tier 1 extends beyond these requirements and fails to consider tax deductible structures such as trust preferred securities that have proven to be discretionary and loss absorbing and are important to preserving competitive equity. The exclusion of these instruments is based on their explicit albeit long-dated, maturities, their cumulative features and their lack of a write-down mechanism. We urge the Committee to remove these criteria from the eligibility tests for inclusion in Tier 1 capital, because, as has been shown by recent experience, they are not impediments to loss absorption.

The key features of trust preferred securities, their long lives approaching economic perpetuity and their dividend deferral rights for up to 20 consecutive quarters, provide substantial loss absorption capability and capital support. These securities demonstrated their equity-like nature by trading at significant discounts during periods of stress. This allowed banks to repurchase them at large gains or exchange them for equity to raise significant capital. The option to suspend coupons can be exercised at the discretion a bank on a going concern basis for an extended period consistent with the length of an economic downturn. We understand there may be some concern regarding the cumulative feature of these securities. We do not agree that cumulative payments should be the basis for exclusion from Tier 1 eligibility for long dated instruments. On a going concern basis, we note that banks may be more likely to defer cumulative than non-cumulative payments since there is greater possibility that investors will recoup losses on cumulative securities in a subsequent recovery.

Cumulative and non-cumulative securities traded similarly during the crisis, indicating little difference in market perception based on this feature. As a result, we believe that traditionally structured trust preferred securities with cumulative features have equivalent loss absorbing capability to non-cumulative securities.

Moreover, exclusion of US trust preferred instruments, which receive tax deductions in the US, will create material competitive inequities. Most instruments eligible for inclusion based on the proposed definition would not be tax-deductible in the US, but nevertheless receive favorable tax treatment in non-US tax jurisdictions. As a result, banks outside the US will have the benefit of tax-deductible Tier 1 instruments and US banks will not. This will raise the funding costs for US institutions and translate into a higher cost of credit for their customers.

Rather than excluding these instruments, the Committee should establish a quantitative limit to recognize their loss absorbing features and avoid introducing competitive distortions while ensuring that common equity remains the dominant component of Tier 1 capital. A limit of 25% on Tier 1 instruments that are not common equity or perpetual non-cumulative preferred stock would strike a reasonable balance between these virtues.

Independent of the arguments above for modifying the Tier 1 eligibility criteria going forward, existing Tier 1 capital instruments should be grandfathered until maturity, or at least ten years if there is no maturity, to allow a gradual and orderly realignment of capital structures. This is particularly necessary given the current state of the economic cycle and the relatively high cost of capital to banks. Regulators need to provide clear guidance for future issuance of Tier 1 instruments before the rules are finalized and implemented, as banks must continue to manage their capital positions during any interim period.

We are encouraged by the Committee's interest in considering contingent capital as an option for banks to improve their capital management capabilities. This may give banks a cost-effective instrument that could attract investors other than equity investors and ensure the availability of additional equity when it is required. We recommend that the Committee consult widely with firms, investment bankers and investors in assessing the possible structures and market viability for contingent capital instruments. We are strongly opposed to establishing any mandatory requirement for contingent capital since there currently is no established market and current tax and regulatory rules in some jurisdictions could make the development of a market very difficult.

Punitive and Pro-Cyclical Capital Adjustments

We have significant concerns with the proposed capital adjustments for unrealized gains and losses, intangibles, financial investments, and deferred tax assets. The proposed deductions from Tier 1 capital are not sufficiently risk sensitive, overly rigid and punitive. We urge the Committee to carefully consider the unintended consequences of increased volatility and pro-cyclicality of capital, impacts to market liquidity, and disincentives for forward-looking provisioning and other risk management activities that would result from a full deduction approach for these exposures. Instead, we recommend the Committee adopt a more graduated, risk-based approach that applies a combination of limits and RWA treatments using a more rigorous case-by-case review of economic risk and potential impact to the industry.

Unrealized Gains and Losses

We strongly urge the Committee to carefully consider unintended consequences of the proposed capital deduction for unrealized gains and losses. We do not believe unrealized gains and losses on securities should be included in capital, particularly if these relate to asset and liability or liquidity management activities. In the US, banks commonly use high-quality long-dated instruments such as US Treasuries, highly-rated sovereigns, agency RMBS and high quality securities to manage interest rate risk and maintain liquidity. As a result, unrealized gains and losses on securities positions primarily reflect interest rate changes rather than credit quality changes for US banks. However, these gains and losses do not reflect a comprehensive assessment of the impact of changes in interest rates on balance sheet value and can be quite misleading if used to evaluate capital adequacy.

Due to the asymmetry in the US generally accepted accounting principles ("GAAP") accounting framework, including unrealized gains and losses will substantially increase the volatility of reported capital ratios and will misrepresent the capital adequacy of US banks with significant asset liability and liquidity management portfolios. US GAAP marks only limited segments of the balance sheet to market and leaves others at historical cost. For example, as interest rates rise, US GAAP accounting reflects the unrealized loss on fixed income securities held in a bank's investment and liquidity portfolio through other comprehensive income ("OCI") but not the corresponding unrealized gain on deposits. Thus, a bank with an asset liability management position designed to benefit from rising rates would be penalized through deductions from Tier 1 for the unrealized loss on the securities positions but receive no offsetting benefit from a more significant gain in deposit values.

The resulting volatility in capital would preclude US banks from holding long-dated securities in their investment portfolios and would paradoxically limit the ability of banks to manage their interest rate risk and maintain liquidity. If large banks were to exit these markets as a result of changes to capital regulation, the unintended effects on market liquidity and pricing would be quite significant. Perhaps as important, such a disincentive for banks to hold Agency RMBS could impact mortgage availability and pricing for consumers.

Intangible Assets

While full deduction may be appropriate for goodwill, it is not appropriate for intangibles that have objective and transferable value for both a going concern and a gone concern. The cash flows associated with identifiable intangible assets, such as mortgage servicing rights, core deposits and purchased credit card receivables are well understood and predictable, so objective and supportable valuations can be established for these assets. The apparent extrapolation of the treatment of goodwill to these assets is not risk based as their value can be established without a high degree of uncertainty.

Mortgage servicing rights are financial assets associated with a set of legal documents. There is an active market for mortgage servicing and sale is possible on both a going and gone concern basis. Experience from the recent market turmoil demonstrates the resilience of mortgage servicing rights, for which values were maintained. The Committee's proposed treatment is disproportionate to the risk of these assets, which are typically hedged for prepayment risk, and places them in the same risk category as residual interests or sub-investment grade securitization tranches. This contradicts the economic reality that payments to mortgage servicers are the highest priority claim on interest distributions in a securitization structure. Finally, full deduction of mortgage servicing rights would render the activity unprofitable for banks and drive it towards unregulated entities with less sophisticated risk management processes and weaker supervisory oversight.

Other types of identifiable intangible assets held by US banks, such as core deposit intangibles and purchased credit card receivables, can be monetized through portfolio and branch sales on a going concern basis and in resolution. Tax authorities allow tax deductions for core deposit and purchased credit card relationship intangibles due to banks' ability to value these assets and estimate their changes in value over time due to customer attrition.

We urge the Committee to consider limits rather than capital deductions for identifiable intangibles such as mortgage servicing rights, core deposits and purchased credit card relationships. The Committee should consider a risk weighting treatment or an approach short of full deduction that reflects differences in risk, such as an application of conservative haircuts specific to each category of intangible asset.

Financial Investments

We recommend the Committee retain the existing risk weighting treatment of financial exposures. The Consultative Document proposes the full deduction of investments in banks, other financial institutions and insurance entities that exceed a 10% ownership threshold. Similarly, the total amount of investments exceeding 10% of a bank's common equity is also deducted. This treatment would apply to both banking book and trading book exposures.

Full deduction of significant financial exposures implies that these exposures have zero value in a stressed going and gone concern situation. Like any other investment, financial investments can be sold or reduced to raise equity in a stressed scenario. Banks use equity investments in other financial institutions to expand internationally, diversify their exposure to domestic markets and leverage local market expertise without the strategic and operational risks associated with acquisitions or building their own infrastructure and penetrating an unfamiliar market. The value of these investments, by design, has a low correlation to the value of banks' domestic operations and therefore full deduction is overly punitive.

Increased risk of single name concentrations for significant exposures should be measured through the existing approaches for equity investments in the Basel II rules, which require recognition of concentration risks both explicitly in Pillar 1 through the internal models approach and as a required component of Pillar 2. We note that in the context of risk measurement, concentration should be measured with respect to the weight of the investment in a bank's portfolio rather than the size of a bank's ownership interest in a given firm. The first criteria for deduction, greater than 10% ownership, is disproportionate to risk in cases where a large international bank purchases an equity stake in a much smaller bank that is greater than the threshold. Such an investment may be insignificant in the context of the bank's portfolio yet result in full deduction.

We appreciate the Committee's desire to eliminate arbitrage between the banking and trading books. However, we believe that extending the scope of financial investment deductions to the trading book and to components of index funds is too broad. Application of the approach to the trading book will not provide a benefit sufficient to warrant the operational costs and complexities involved in applying the tests and removing positions from the trading book value at risk ("VaR") when a deduction is triggered. We do not feel such an approach is necessary due to the fact that the trading book is subject to mark to market accounting, valuation controls and aging policies. Additionally, the inability to net short positions overstates the risk of the bank and leaves open the possibility of a full deduction from capital of a long position and an RWA charge for a short position. This asymmetry is not congruent with good risk management principles. Finally, we are concerned that application to the trading book would have unintended consequences for market liquidity if applied to banks that are primary market makers for financial equities.

We therefore recommend the Committee retain the existing risk weighting treatment of financial exposures. If the Committee elects to move forward with the deduction approach, we strongly urge the committee to limit the application of deductions to the banking book and provide language to grandfather existing holdings or phase in the deduction of these investments over at least ten years to allow for a realignment of capital structures. This is particularly necessary given the material impact of the deductions, the current state of the economic cycle and the relatively high cost of capital to banks. We also would request better definitional guidance on the proper scope of financial institution exposure.

Deferred Tax Assets

We strongly object to the proposal for full deductions of deferred tax assets ("DTAs"). We urge the Committee to amend the proposal to only deduct deferred tax assets that are not created due to loan loss provisioning and cannot be recognized based on projections of taxable income within a reasonable look forward period or 1 to 3 years rather than deducting the full amount. Full deductions for deferred tax assets are overly punitive, will create a strong disincentive for prudent loan loss reserving and will greatly increase pro-cyclicality in capital requirements. The potential impacts run contrary to the articulated objectives of the Committee. Due to the significant differences in accounting for DTAs, tax treatment for loan loss provisions, and other regulatory differences, national supervisors must be permitted discretion in application of any final rule on DTA to avoid materially different impacts across countries.

Unlike many other categories of assets, the value of deferred tax assets is relatively objective, depends on known tax rules in each jurisdiction and is not subject to the uncertainties of market valuation. Deferred tax assets maintain value over protracted periods, making the realization of value all the more likely even when dependent on future profitability. There are strict and well known accounting tests for recognition of deferred tax assets, which introduce a high documentary hurdle before they can be recognized. Moreover, these accounting practices are examined by external auditors. Experience has shown that deferred tax assets net of conservatively established valuation reserves are not lesser assets in terms of ultimate realizable quality.

We strongly recommend the Committee consider a separate RWA treatment for deferred tax assets resulting from loan loss reserving to avoid disincentives and minimize pro-cyclicality. Requiring a full deduction for deferred tax assets associated with loan loss reserves will penalize banks and create a powerful disincentive for prudent reserving practices. The timing discrepancy between when provisions are taken for prudential purposes and when they are recognized for tax purposes is one of the primary sources of deferred tax assets. While GAAP accounting recognizes a book tax expense when provisions are taken, US tax authorities do not permit tax deductions until losses are actually realized through charge-offs. As a result, prudential and forward looking reserving creates substantial deferred tax assets. The value of these assets, however, is inevitably realized over subsequent periods, typically two to three years, as losses occur and are recognized as taxable expenses.

Because of the tight linkage of deferred tax assets to provisioning decisions, full deduction will significantly increase the pro-cyclicality of the capital regime. Even with the limit approach in the US, which deducts the amount in excess of the lesser of the deferred tax assets that cannot be recognized within one year and 10% of Tier 1 capital, the deduction of deferred taxes has been a significant source of capital volatility. To neutralize this disincentive for forward looking reserving and minimize pro-cyclicality, we urge the Committee to adopt a carve-out treatment for deferred taxes associated with loan loss reserves and apply an RWA treatment rather than a simple deduction.

Since the time period to reverse cash versus book tax timing differences may be somewhat protracted, a reasonable approach would be to deduct only the portion of the deferred tax asset that is unlikely to be recognized over a meaningful horizon, such as 1-3 years. Alternatively, the Committee may wish to maintain the horizon at one year for consistency with other elements of the framework, but set the deduction at 50% rather than 100%. Limits based on the overall amount of deferred tax assets relative to Tier 1 should be established at high enough levels to provide a prudential backstop rather than a binding constraint under normal operating conditions.

Finally, we note that requiring full deduction for deferred tax assets will greatly reduce the supervisor's options for problem bank resolution. Due to the accumulation of losses, troubled institutions will have significant deferred tax assets, which are economically valuable to acquiring institutions with taxable income. However, deductions from capital of the acquiring institution would create a significant impediment to resolution at a time when acquisitions should be facilitated. Even under the existing framework in the US, which requires deduction of deferred taxes not realizable within one year, regulators have had to grant relief to support resolution plans for troubled institutions. While national discretion would alleviate this concern to a degree, we submit that regulation should as an objective be of general applicability and work without the need for frequent exceptions.

Loan Loss Reserve Shortfalls

We agree that reserve shortfalls relative to expected credit losses should be deducted from Tier 1 capital. However, the proposal is silent on the treatment of reserves in excess of expected loss, and we consider symmetric treatment critical to the reduction of pro-cyclical volatility. We recommend the Committee adopt a symmetric approach towards excesses and deficits, treating both as adjustments to Tier 1 capital. This will also increase the incentive for forward-looking provisioning. We also urge the Committee to consider excess reserves to be a component of Tier 1 capital without the 0.6% limit or any other limitation relative to RWA.

Reserves cover losses on a going concern basis even before shareholders' equity and therefore should be counted as Tier 1 rather than Tier 2 capital. Moreover, loan loss reserves are simply an accounting reclassification of common equity to a contra asset account. This reclassification has no effect on the solvency of the institution, yet the artificial subdivision of capital into Tier 1 and Tier 2 categories makes it appear that institutions in regulatory jurisdictions with more conservative reserving practices are less solvent than comparable institutions in other countries. The recommended deduction for deferred tax assets compounds this problem. The significant differences in reserving, accounting and tax practices across regulatory jurisdictions would have no impact on reported capital ratios if common equity and loan loss reserves were placed on equal footing within Tier 1 capital. It is paradoxical that conservative reserving practices would be penalized in a risk-based capital framework.

We are pleased that the Committee intends to review the arbitrary limits on the total amount of reserves qualifying as capital. We strongly believe there should be no limitation on the amount of reserves that qualifies as capital. The current 0.6% limitation under Basel II is not justifiable, as all of the loan loss reserve is available to absorb loss.

Other Deductions

The proposed treatment of minority interests is too simple. It is important that the definition of capital consider the capital quality of minority interests and provide a limited capital benefit for high-quality positions. The Committee's proposal for full deduction disregards the disposal value that minority interests would have even in stressed environments. Sales of minority interests can be an important source for rebuilding equity. Minority investments are a sound means of diversifying earnings and gaining local market expertise that contribute to overall risk management. A risk-based capital regime should not penalize such investments relative to full subsidiary ownership. Finally, we disagree with a full deduction of defined benefit pension fund assets and liabilities. The proposed approach is excessively punitive, providing incentives to banks to under-fund pension liabilities. The rules should instead place a reasonable limit on pension assets as a percent of Tier 1.

Timing and Phased Approach

The Consultative Document's proposed additional deductions from Tier 1 capital, even if adopted only in part, would be significant from both quantitative and qualitative perspectives for many banking organizations. Accordingly, similar to the required phase-in period needed for any migration of the definition of eligible Tier 1 capital instruments, a relatively long transition period, lasting at least five years, should be allowed to facilitate an orderly and gradual transition into new standards for Tier 1 capital deductions.

Technical Aspects of Risk Coverage Proposals

We appreciate the Committee's objective of strengthening the risk coverage of the Basel II framework in the wake of significant counterparty credit losses. We agree with the Committee's conclusion that there were areas where capital for counterparty credit risk proved to be inadequate. We confirm the Committee's observations that the key areas requiring reform include the generalized wrong way risk, credit valuation adjustment risks, closeout periods for complex netting sets and greater systematic risk for financial exposures.

Although we agree with the nature of the problems to be solved, we have significant concerns with regard to the solutions that have been proposed by the Committee.

Stressed Expected Positive Exposure

In concept, we agree with the notion that expected positive exposure ("EPE") should be calculated using data that include a period of stress. This should not materially increase capital levels in the current environment because the last two years of market data clearly include a stress period. However, stressed data requirement will ensure that the full range of economic environments is considered when markets are more benign.

Our concerns primarily involve the operational difficulties and costs associated with implementation of this approach, which although not insurmountable will nonetheless weigh against the benefits. Our first concern is the computation time required to produce both current and stressed EPE. Calculation of two sets of EPE values will increase operational risk and require additional computing capacity and processing time. We also have some concern regarding the potential difficulty for banks using market-implied volatilities for their current EPE to generate stressed historical EPE calculations without creating alternate systems solely for Basel II compliance.

Rather than require banks to compute both current and stressed EPE, we suggest the same goal could be achieved by a more straightforward requirement to include a period of significant stress in the EPE calculation. If needed to achieve prudential goals, a mechanism for scaling EPE can be developed for cases where inclusion of a sufficiently stressed environment is not demonstrated to the satisfaction of the regulators.

Capital Add-On for CVA Risk

We agree with the need for a capital charge for the credit spread risk associated with credit valuation adjustments ("CVA") but are concerned that the simple add-on approach proposed by the Committee is inconsistent with risk management practices and excessively punitive.

We respectfully submit that capturing CVA risk within the existing VaR, Stressed VaR and Incremental Risk Charge (IRC) trading book measures would be much more effective and accurate. The regulatory capital for counterparty credit risk exposures that are marked to market and managed within the market risk process should be treated consistently with other risks in the trading portfolio. An integrated approach would allow for more accurate measurement of CVA risks and recognition of associated hedges, be consistent with the risk management processes and practices of banks, and align incentives for active hedging and mitigation of counterparty credit risks. The Committee should consider a two-tiered approach, where banks with accounting practices that mark-to-market CVA using credit spreads adopt a trading book VaR approach subject to stringent supervisory approval process and those with other accounting practices or without model approval use the simplified bond-equivalent methodology.

Although we suggest it be used as a backstop for banks without model approval for trading book treatment of CVA risk, we believe the bond-equivalent approach proposed by the Committee has a number of deficiencies that must be addressed before it would be a suitable approach for determining regulatory capital. The proposed CVA add-on and stylized VaR approach treats each counterparty exposure as a zero-coupon bond with maturity equal to the longest effective maturity of netting sets. This approach has several methodological problems. First, the zero-coupon bond proxy is a poor approximation of the exposure profile of CVA. CVA risk is more naturally represented by a series of cashflows reflecting the shape of the exposure profile at the netting set level. Second, the inclusion of general interest rate risk in the bond-equivalent approach creates a significant long position in interest rates that is incongruent with risk of CVA. Third, the standalone nature of the calculation ignores diversification benefits in the context of the whole trading book. CVA is by nature highly correlated with other market risk, and there is no reason to treat mark-to-market changes differently in the CVA book. Finally, the limited recognition of credit indices and other non-name specific hedges ignores the economic reality that all hedges contribute to the trading portfolio profit and loss. These technical problems are not insurmountable. Indeed, the industry will offer an alternative methodology through the ISDA comment letter that remains within the spirit of the proposed bond-equivalent approach yet addresses most of the technical issues described above.

Finally, we urge the Committee to avoid introducing a double counting of risk between the CVA charge and existing banking book charges for counterparty credit risk. The proposed CVA charge overlaps with the credit risk charge in the banking book counterparty risk RWA calculations. The effective maturity parameter in the banking book RWA formula already reflects the impact of "changes in economic value that stem from deterioration in the counterparty's credit risk short of default". In order to avoid a double counting of risk, the RWA calculation for counterparty credit risk should be modified to exclude the maturity adjustment entirely or substantially reduce its impact. If CVA risk is ultimately integrated into the trading book IRC charges and the counterparty credit charge for default risk remains in the banking book framework, the IRC should similarly be modified to retain credit spread and migration risk but exclude default risk.

Increased Margin Period of Risk

We agree with the requirement to extend the margin period of risk to 20 days for over the counter ("OTC") derivatives and securities for netting sets that are large, have illiquid collateral or represent hard-to-replace derivatives. We note that these criteria are redundant since most large netting sets to professional trading counterparties will have one or more exposures meeting these criteria. We submit that application of only the netting set criteria would accomplish the same goal with significantly less operational complexity and cost. We are concerned that the existence of an immaterial number or exposure amount for trades meeting the illiquid collateral and hard-to-replace derivatives criteria will taint the entire netting set. We agree that the margin period should also be increased for netting sets which have experienced a material number of extended disputes but have concerns regarding the operational costs of implementation, clarity of the definition of what constitutes a dispute and the absence of materiality thresholds for the amount of the dispute.

Other Topics

The Committee has not solicited evidence or participation from the industry regarding the proposed multiplier of 1.25 on correlations for large financial institutions. While we do not disagree that large financial institutions are prone to greater systematic risk, we believe the calibration of such an important parameter should be fully transparent and supported by empirical evidence. Neither of these criteria has been met by the Committee. The practical aspects of the implementation should also be clarified with respect to scope of application and definition of financial institutions to which the multiplier will be applied. The Committee should clarify whether the proposed multiplier applies to both counterparty risk and wholesale banking book exposures as well as provide an actionable definition of an unregulated financial intermediary.

We agree with higher supervisory haircuts for repo-style transactions using securitization collateral and the prohibition of re-securitizations as financial collateral. However, we request the Committee clarify whether definition of securitization exposures applied in this case corresponds to securitizations as defined in the banking book. In particular, we believe that agency pass-throughs should be excluded from this treatment.

We agree with the recognition of de minimus credit risk for OTC derivatives cleared through central counterparty clearing houses ("CCPs") and the assignment of zero risk weights if they comply with eligibility requirements established through regulatory efforts.

Application of the Securitization Framework to Trading Assets

We appreciate the Committee's concern with regard to excessive reliance on external credit ratings instead of conducting necessary due diligence to understand the risks underlying rated instruments. The July 2009 package of enhancement measures requires banks to supplement regulatory capital assessments based on externally rated securitizations with their own credit analysis and capital estimates for the exposure. In particular, banks must collect a range of information on the underlying collateral supporting the securitization. Failure to conduct due diligence will result in deductions of the exposures from capital. These criteria are equally applicable to the banking book and trading book.

We urge the Committee to develop a more graduated approach reflecting the volume, holding periods, mark-to-market accounting and valuation controls for trading portfolios. Independent credit analysis for trading book exposures on the same scale as for banking book exposures could be extremely onerous and would not strike an adequate balance of costs and benefits. It is critical regulators not swing the pendulum so far that banks choose not to purchase RMBS and ABS, as this will limit credit availability and increase prices for consumers.

We are encouraged that the Committee intends to undertake a more fundamental review of the securitization framework. The Committee should remain mindful that securitization served the global economy well for many years prior to the current crisis, and continues to be a useful, legitimate tool. The question now is what standards will best help the infrastructure without making the process impractical. If policy responses are not appropriately designed, and the pendulum swings too far towards codification of punitive requirements, overregulation may make it more difficult for banks to rationalize participation in the securitization markets relative to other capital and funding options. If this occurs, it may create greater risks to the economy than the risk that inappropriate transactions will resurface in scale. Policy options should be approached in this light, and Committee policy prescriptions associated with the Consultative Document should recognize these broader issues and new reality.

Since the July 2009 package will greatly expand the scope of application to include securitization exposures previously assigned capital under the market risk rules, a thorough review of the securitization framework is both necessary and urgent in light of recent Quantitative Impact Studies.

Specifically, we urge the Committee to reconsider the mandatory use of the ratings-based approach for cases where the bank has sufficient information to meet the requirements of the supervisory formula approach. This will alleviate undue reliance on external credit ratings, promote the development of better internal risk management practices and better align capital to the economic risks of the exposures. We hope the Committee will also review the credit risk mitigation approaches applicable to securitizations. As a result of the expanded scope to include securitization exposures held in the trading book, it has become increasingly evident that the credit risk mitigation rules for securitization exposures are inadequate for portfolios with both long and short positions and economic hedging strategies. Finally, we request the

Committee review the treatment of securitization exposures carried at a deep discount in the securitization framework. It has become evident that external credit ratings are not indicative of the remaining risks after significant mark downs have been applied to the carrying values of these securities.

Definitions of Exposure for the Leverage Ratio

We support a globally consistent leverage ratio as a component of Pillar 1 in the interest of the stability of the sector and of the broader economy. As US banks are already subject to a leverage ratio limit, an international leverage ratio will level the playing field across jurisdictions. However, we strongly emphasize that the appropriate role of the ratio is a backstop measure to control leverage. The Committee should be careful in its design of the leverage ratio to prevent it from becoming the binding constraint in managing capital and to ensure it does not result in an overall increase in capital across the industry. Failure to do so would undermine the risk-based capital framework and distort incentives by eliminating the sensitivity of required capital to increased risk on banks' balance sheets.

We support the use of Tier 1 capital as the numerator subject to our previous comments regarding its composition and adjustments. However, we are concerned about the inclusion of certain exposures in the denominator. Our primary concerns are the treatment of netting for OTC derivatives and repo-style transactions, consolidation of underlying asset pools for securitizations, treatment of CDS on a gross basis, use of notional amounts for unfunded commitments and other off-balance sheet exposures and the inclusion of high quality assets held for liquidity risk management reasons. We believe the methodological choice of gross or notional amounts for these exposures is excessively punitive and disproportionate to the goal of implementing a non-risk-based measure of exposure and achieving international comparability.

Netting

The proposed treatment, which disregards netting agreements in favor of gross exposure, appears to be justified on the grounds of international comparability and the definition of the leverage ratio as a non-risk based approach. The application of gross amounts is excessively punitive and would discourage good risk management practices, forcing trading activity outside the regulated environment. This treatment fails to recognize that netting and margin agreements have been demonstrated to be reliable and enforceable during periods of stress.

The unintended consequence might well be a massive shift of trading activities to unregulated entities and a reduction in liquidity in markets that are important to the economy. For example, banks will be required to hold capital on the gross exposure amount even when the net exposure is zero and risk is extremely limited. Given the very material gross exposures at the largest institutions, adopting a gross measure of exposure is bound to cause business and market disruptions.

Derivatives

The Committee notes that it may consider an exposure calculation based on the current exposure method ("CEM") used in Pillar 1 for derivatives, margin loans and repo-style transactions. We strongly encourage the committee to pursue this alternative, as the CEM approach reflects both potential and current exposure and provides at least partial recognition of netting.

Securitization Exposures

To promote competitive equity, we recommend the Committee adopt the consolidation criteria underlying FAS 166 and 167 as the basis for including securitizations in the leverage ratio calculation. The implementation of Statement of Financial Accounting Standards No. 166 and No. 167 under US GAAP has already caused many securitizations to be consolidated even where the US banks have little to no risk exposure. We urge the Committee to avoid including the remaining non-consolidated securitizations in the denominator of the leverage ratio. These securitizations have met all criteria for de-recognition of balance sheet assets in terms of transfer of risk and beneficial control. Non-consolidated securitized assets should be treated in a manner identical to other assets which have been sold for GAAP accounting purposes where only a low level of incidental recourse remains with the seller in the form of representation and warranty risk, such as is the case in whole loan divestitures.

Credit Default Swap ("CDS") Positions

CDS positions should not be measured on the basis of gross exposure if they are in a trading book. Trading books are managed on a net risk basis, and gross long positions are not reflective of actual risk exposures.

Other Off-Balance Sheet Exposures

Including off-balance sheet exposures, such as unfunded commitments and letters of credit, overstates actual leverage and is likely to unnecessarily reduce credit availability and increase borrowing costs for customers. We recommend instead the calculation of credit equivalent amounts under the standardized rules for off-balance sheet exposures. This would alleviate concerns with regard to excessively harsh treatment for exposures with historically low risk experience such as short-term self-liquidating trade credits and commitments the bank has the unconditional right to cancel.

Liquidity Pools

Because the Committee's liquidity proposals will require banking organizations to hold significant levels of high quality liquid assets, we believe it is extremely punitive to also include these in the denominator of the leverage ratio. We recommend assets that meet the high quality asset requirements of the liquidity proposal be excluded from the denominator, as they represent extremely low levels of risk, and their exclusion would create a strong incentive for sound liquidity risk management practices.

Measures to Reduce Pro-Cyclicality

We are very supportive of efforts to reduce the cyclicality of the Basel II framework. We recognize that there is a trade-off between risk sensitivity and the degree of cyclicality over time. The mechanisms to reduce cyclicality in the current Basel II framework, which include the use of through-the-cycle probability of default ("PDs"), downturn loss given default ("LGDs") and exposure at default ("EADs"), minimum requirements for length and breadth of reference data with respect to economic downturns and slope of the correlation function, have not been sufficient to moderate the pro-cyclical tendency of the capital framework.

We therefore support the Committee's effort to assess additional measures to further dampen cyclicality. However, the presented alternative of using peak PDs in the RWA calculations would double-count the systematic component of credit risk already captured via the asset correlations in the capital formula. We believe that additional clarity and guidance for through-the-cycle PD estimates would yield a greater impact towards reducing cyclicality.

We support efforts to align provisioning requirements and expected loss, especially if the pro-cyclicality of expected loss calculations can be dampened. However, we emphasize that consistency between accounting and regulatory loan loss reserve objectives is a prerequisite to reduce pro-cyclicality and remove incentives to banks to hold inappropriately low credit reserves.

We support the notion that banks should build capital buffers that can be drawn down as losses are incurred in a stressed environment. Banks are already establishing buffers designed for their unique circumstances though the Pillar 2 internal capital adequacy assessment processes. We strongly encourage the Committee to steer away from introducing a buffer in the context of Pillar 1 that would be too blunt an instrument to be meaningful. Ultimately this would be interpreted as a de facto minimum capital requirement and would not vary with the cycle (i.e., would not be drawn down in a stress period). We believe capital conservation measures would be more effective under a Pillar 2 approach. This would allow the assessment to focus on the facts and circumstances particular to the earnings, capital and liquidity of the individual firm, consider its governance and risk management practices and promote proactive dialogue between the firm and its primary supervisors.

We urge the Committee to avoid explicit capital triggers that would restrict a bank's ability to distribute earnings to shareholders and compensate employees. Prudent management discipline and effective Pillar 2 processes should require capital management plans that outline responses to a reduction in capital relative to internally assessed and Pillar 1 minimum capital requirements. We instead recommend capital conservation standards that would require banks to provide updated Pillar 2 capital plans and forecasts to their primary regulators and, in more extreme cases, require regulatory approval for earnings distribution. Inflexible triggers and restrictions cannot accommodate an analysis of a bank's unique financial position and would needlessly put a bank at a competitive disadvantage, leading to a downward spiral in its financial condition.

As we do not support explicit capital triggers that would restrict distribution of earnings, we also do not support industry-wide adjustments to the triggers in periods of excessive credit growth. Credit growth is better controlled through industry-wide credit underwriting and risk management requirements. As necessary, regulators should require higher capital for those banks with weak credit underwriting and risk management. An industry-wide approach may affect institutions with sound risk management and underwriting practices that do not excessively increase credit.

Summary

Bank of America strongly supports the objective of improving the resiliency of the banking sector, particularly in light of market events over the last two years. In doing so, it is important to ensure that the framework of international capital regulation, risk management and liquidity risk management remains sound. We are supportive of the Committee's efforts to strengthen and harmonize global capital regulations and promote a more resilient banking sector. Sensible improvements to the banking sector's ability to absorb shocks arising from financial and economic stress will allow banking organizations to serve better their consumer and commercial clients, and to stand as a reliable source of strength performing core financial intermediation functions for the real economy during all points in future credit cycles.

We would be happy to discuss our views in greater detail or discuss any new ideas the regulatory authorities wish to pursue. In that regard, please contact Paul J. Baalman, Senior Vice President for Capital Management at (980) 386-4573, or John S. Walter, Senior Vice President for Risk & Capital Analysis at (415) 913-2706.

Sincerely,

Mark D. Linsz
Treasurer
Bank of America