

MINUTES



To: Board Members

From: Statement 140 Amendment Team
(Stell, ext. 211)

Subject: Minutes of the October 1, 2003 Board Meeting **Date:** October 2, 2003

cc: Bielstein, Smith, Petrone, Leisenring, Project Team, Mahoney, Thompson, Vincent, Sutay, Gabriele, Swift, Polley, FASB Intranet (e-mail)

Topic: Qualifying Special-Purpose Entities: Issues Related to the Distinction between Beneficial Interests and Undivided Interests, Transferor Support for Qualifying Special-Purpose Entities, Transition Provisions, and Effective Date

Basis for Discussion: Board memorandums 9 and 10 dated September 19, 2003 and Board memorandums 11, 12, and 13 dated September 29, 2003

Length of Discussion: 9:00 a.m. to 10:00 a.m.

Attendance:

Board members present:	Herz, Schipper, Batavick, Crooch, Seidman, and Schieneman
Board members absent:	Trott (participated by phone)
Staff in charge of topic:	Lott and Lusniak
Other staff at Board table:	Smith, Donoghue, and Stell
Outside participants:	None

Summary for ACTION ALERT:

The Board discussed issues related to the distinction between undivided interests and beneficial interests, and decided to amend paragraphs 80—84 and various related paragraphs of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, to require that an entity that issues either beneficial interests or undivided interests be a qualifying special-purpose entity (SPE) in order to satisfy the criteria in paragraph 9(b) of that Statement.

The Board noted that one implication of its decision would be that a qualifying SPE would be required for any transfer of a portion of a financial asset, not just for multiple-step transactions.

The Board also decided that if transferors of financial assets provide support commitments or derivatives either directly to beneficial interest holders or in connection with the beneficial interests, those obligations should be considered in the same manner as if they were provided directly to the qualifying SPE for purposes of evaluating legal isolation. That requirement would include support commitments entered into with third parties who provide “back-to-back” guarantees to beneficial interest holders.

The Board decided to reexpose some or all of its decisions reached in its redeliberations and deferred decisions about effective date and transition provisions until the October 15, 2003 meeting.

Matters Discussed and Decisions Reached:

The following paragraphs summarize the discussion at the October 1, 2003 Board meeting. The discussion is grouped by topic.

Accounting for Beneficial Interests and Undivided Interests

Board members addressed the accounting for beneficial interests and undivided interests and discussed whether the two items exhibit distinguishing characteristics that warrant different accounting treatment.

The staff recommended that the Board require that an entity that issues either beneficial interests or undivided interests must be a qualifying SPE in order to meet the criteria in paragraph 9(b).

The staff noted that the requirement would reduce the opportunity for restructuring transactions to avoid using qualifying SPEs and pointed out that the requirement would likely require additional amendments to Statement 140 that were not proposed in the Exposure Draft.

Ms. Seidman expressed support for amending paragraphs 80–84 of Statement 140 to: (1) clarify that the transferor includes any members of its consolidated group; (2) clarify that if the transferee is constrained, it must be a qualifying SPE in order to meet the criteria in paragraph 9(b); and (3) leave the term *securitization* in place. She noted that the staff's recommendation would produce many unintended consequences and that the proposed amendments would require reexposure. She also voiced her concern that one implication of the staff's recommendation is that a qualifying SPE would be required for *any* transfer of a portion of a financial asset, not just for multiple-step transactions. Mr. Schieneman agreed with those comments.

Mr. Trott supported the staff's recommendation and stated that Statement 140 does not make a clear distinction between beneficial interests and undivided interests, and, therefore, an inappropriate accounting treatment alternative has developed over time. He noted that that treatment alternative should be eliminated and the Board should adopt transition provisions that lessen the effects of any unintended consequences. Mr. Crooch and Ms. Schipper agreed with those comments and emphasized that beneficial interests and undivided interests are not sufficiently different and do not deserve different accounting treatment.

Ms. Schipper also added that transition provisions should allow for the difficulties that constituents may encounter in restructuring arrangements. She emphasized that Statement 140 specifically required that qualifying SPEs be difficult to change.

Mr. Herz supported the staff recommendation but noted that it would represent a fundamental change. He suggested that it would require reexposure. Two Board members (EWT, KAS) supported the staff recommendation with no reexposure. Three Board members (RHH, GJB, GMC) supported the staff recommendation with re-exposure, and two Board members (LFS, GSS) supported Ms. Seidman's proposal and indicated that they would not oppose reexposure. Ms. Schipper stated that reexposure would not cause her to change her support for the staff's recommendation. The Board did not decide whether all or part of the Exposure Draft would be reexposed.

Transferor Support Commitments

The Board continued its discussion of support commitments and derivatives provided by a transferor to a qualifying SPE. The following four ways that a transferor can provide support were considered:

1. Holding subordinated interests or entering into commitments to provide other forms of support (which pass the "true sale" test) directly to a qualifying SPE
2. Entering into commitments or derivative arrangements directly with investors in a qualifying SPE (for example, guaranteeing the return to a beneficial interest holder)
3. Entering into "back-to-back" instruments with third parties that provide support for investors
4. Holding an equity investment in the transferee or the investors.

The staff recommended to the Board that the second and third types of support (as listed above) be treated as if they were provided directly to a qualifying SPE for purposes of determining compliance with the legal isolation requirements in paragraph 9(a). Board members agreed that all of the transferor's support commitments should be considered when determining if a true sale has occurred. One Board member (RHH) questioned whether attorneys would be capable of providing such a comprehensive true sale opinion and indicated that the Board should seek additional information in this area when it reexposes the document.

Effective Date and Transition

The Board deferred its discussion on effective date and transition provisions until the October 15, 2003 meeting to allow the staff to consider the potential impact of reexposing all or a portion of the Exposure Draft.

Related Matters

Ms. Seidman suggested that the Board broaden the scope of Statement 133 Implementation Issue No. G24, "Accounting for the Discontinuance of Hedging Relationships Arising from Changes in Consolidation Practices Due to Initially Applying FASB Interpretation No. 46," to include the continuance of hedging relationships arising from changes in consolidation practices resulting from the initial application of all new accounting literature pertaining to consolidation, not just FASB Interpretation No. 46, *Consolidation of Variable Interest Entities*. No decisions were made on this matter.

Follow-up Items:

None.

General Announcements:

None.