

MINUTES (REVISED)



To: Board Members

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

Subject: Minutes of the September 3, 2003 Board Meeting **Date:** September 8, 2003

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

Topic: Qualifying Special-Purpose Entities:
Approach and Reactions to Issues
Raised to Date

Basis for Discussion: Board memorandum dated
August 27, 2003

Length of Discussion: 1:00 p.m. to 1:40 p.m.

Attendance:

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

Summary for ACTION ALERT:

The Board discussed issues raised by respondents to the Exposure Draft, *Qualifying Special-Purpose Entities and Isolation of Transferred Assets*, and at the FASB Open Roundtable Discussion on August 28, 2003. The Board considered alternative approaches to achieve the original objectives of the project, for example restricting rollovers of beneficial interests by qualifying special-purpose entities (SPEs) instead of prohibiting certain combinations of interests in qualifying SPEs that roll over beneficial interests. The Board expressed support for the general approach in the Exposure Draft but reached no decisions about specific aspects of that approach.

Matters Discussed and Decisions Reached:

Ms. Schipper stated the the Board should continue to pursue the general approach in the Exposure Draft and suggested that the Board investigate the following matters:

- The distinction between an undivided interest and a beneficial interest.
- Whether a credit guarantee is sometimes structured to be the same as a subordinated beneficial interest.
- Which, if any, types of derivatives a qualifying SPE should be permitted to enter into with the transferor.
- Adding statements of the Board's intended objectives to the final Statement to clarify the Board's intent.

Mr. Trott agreed that the Board should continue to pursue the general approach in the Exposure Draft and made the following recommendations:

- In addition to clarifying the distinction between undivided interests and beneficial interests, the Board should also address the question of when a qualifying SPE must be used.

- The Board should reconsider its prohibition of commitments by the transferor to provide more assets to qualifying SPEs that do not roll over beneficial interests.

Ms. Seidman proposed an approach different from the approach in the Exposure Draft. She was unsure if her proposal would require re-exposure of the Exposure Draft. She stated that the Board should:

- Consider restricting rollovers of beneficial interests by a qualifying SPE to those that are “automatic” and do not provide a significant benefit to the transferor instead of restricting combinations of interests in qualifying SPEs that roll over beneficial interests (instead of the proposed paragraph 35(f)).
- Consider exceptions to the prohibition on equity instruments.
- Clarify paragraph 9(a) generally as proposed in the Exposure Draft. She believes that that clarification adequately addresses total return swaps.
- Modify paragraph 9(c) to require assessment of effective control not only by the transferor but also by its agents and affiliates. She believes that that clarification addresses other forms of continuing involvement between a transferor and a qualifying SPE.
- Clarify the applicability of paragraph 9(b) to entities other than qualifying SPEs, rather than focusing on the type of interest issued to investors.
- Delete paragraph 35(e) because it is inconsistent with Statement 140 current guidance relating to ROAPs and other guarantees, and is adequately addressed by her proposed changes to paragraphs 9(c) and 35(f).

Mr. Crooch favored continuing to pursue the approach in the Exposure Draft and stated that he is particularly concerned with the two-step transfer requirements and the distinction between undivided interests and beneficial interests. Some specific questions he would like to answer are whether undivided interests can ever be subordinated to one another and whether the transfer of an undivided interest in assets is equivalent to a sale of a portion of the assets. If those

questions are answered affirmatively, he wanted to know when a qualifying SPE is required to be used.

Mr. Schieneman would prefer to adopt the linked presentation method of accounting for transfers of financial assets (similar to the requirements of the UK Accounting Standards Board) but acknowledged that approach would be difficult, if not impossible, at this time. He recommended more of an objectives-oriented approach, but he did not believe that the objectives that the staff had suggested in Memorandum 4 addressed the reissuance issues that gave rise to this project.

Mr. Batavick recommended that the Board develop a more robust definition of *reissuance*, permit more time between issuance of the final Statement and the effective date, and ease the transition by being more liberal with grandfathering.

Mr. Herz recommended that the Board:

- Take a more objectives-oriented approach.
- State in the final Statement that the objective of the restrictions on rollovers is to apply the “entirely specified” and “significantly limited” requirements that are already present in paragraph 35(b). His favored approach would be to require that the transferor not be able to have rights and obligations that permit it to control or significantly affect its benefits from the entity.
- Consider further the effect on transferor accounting of the distinction between undivided interests and beneficial interests. He referred to FASB Statement No. 77, *Reporting by Transferors for Transfers of Receivables with Recourse*, and distinctions made in that Statement between interests that grant pro-rata rights to cash flows or otherwise divide cash flows without subordination and interests that are subordinated to one another.
- Modify the proposals related to guarantees and commitments and change detailed restrictions from rules to examples of overall objectives.
- Not conclude that multiple involvements with the same entity by a parent and a subsidiary result in a presumption of effective control by the consolidated enterprise.

Follow-up Items:

None.

General Announcements:

None.