



Financial Accounting
Standards Board

To: Board Members
From: Statement 140 Team (Sperry, ext. 445)
Subject: Minutes of the December 17, 2008
Board Meeting: Redeliberation of
Proposed Amendments to Statement
140
Date: December 29, 2008

cc: FASB: Golden, Bielstein, Lott, Proestakes, Stoklosa, Donoghue, Mayer, Hood, Barker, Maroney, Roberge, Lusniak, Nickell, Inzano, Mathys, Yust, Sperry, Reager, C. Smith, Chookaszian, Posta, Gabriele, Sutay, Glotzer, Mechanick, Cropsey, Wilkins, Allen, Klimek, FASB Intranet; IASB: Leisenring, Kusi-Yeboah, Teixeira, Mueller, Francis

The Board meeting minutes are provided for the information and convenience of constituents who want to follow the Board's deliberations. All of the conclusions reported are tentative and may be changed at future Board meetings. Decisions become final only after a formal written ballot to issue a final Statement, Interpretation, or FASB Staff Position.

Topic: Redeliberation of Proposed Amendments to
Statement 140

Basis for Discussion: Board Memorandum No. 110

Length of Discussion: 8:30 to 10:00 a.m.

Attendance:

Board members present: Herz, Linsmeier, Seidman, Siegel, and L. Smith

Board members absent: None

Other participants: None

Staff in charge of topic: Donoghue, Barker, Hood, Yust, and Sperry

Other staff at Board table: Golden, Proestakes, C. Smith, and Mayer

Summary of Decisions Reached

The Board decided to complete its short-term project to amend FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, rather than to focus exclusively on the long-term joint project with the IASB to develop a common derecognition standard. Once completed, the Board expects to join with the IASB on the long-term project. The Board is reluctant to reconsider linked presentation in the short-term project; however, the Board asked the staff to bring back the issue of linked presentation for redeliberation if the Board receives additional information about a workable model.

The Board decided that the staff should evaluate the differences between the control assessments in the proposed amendments to Statement 140 and FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities*, as the redeliberations of both projects continue. The Board also asked the staff to provide an example of a guaranteed mortgage securitization to assess the operability of the proposed amendments to both Statement 140 and Interpretation 46(R), including consideration of the classification of transferred mortgage assets as loans or securities.

The Board affirmed the following provisions of the Exposure Draft of the proposed amendment to Statement 140:

- a. Removal of the concept of a qualifying special purpose entity
- b. The requirement that a transferor consider all arrangements or agreements made contemporaneously with, or in contemplation of, the transfer, even if they were not entered into at the time of the transfer
- c. Implementation guidance on isolation
- d. Removal of special provisions for guaranteed mortgage securitizations.

The Board decided to consider at a future meeting the proposed changes related to:

- a. Participating interests
- b. Partial sales
- c. Amendments to paragraph 9(c)(3) of the proposed amendment to Statement 140 related to effective control

- d. Whether a transferor regains control of transferred financial assets, as discussed in EITF Issue No. 02-9, “Accounting for Changes That Result in a Transferor Regaining Control of Financial Assets Sold,” and paragraph 55 of the proposed amendment to Statement 140
- e. Measurement of participating interests and beneficial interests held by a transferor
- f. Whether guidance about implicit arrangements, which was included in the definition of continuing involvement of FSP FAS 140-4 and FIN 46(R)-8, *Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities*, should be provided in the proposed amendment to Statement 140
- g. Disclosures.

Objectives of Meeting:

The purpose of the meeting was for the Board to decide whether to redeliberate the issues raised by respondents to the Exposure Draft of the amendments to Statement 140. The objective of the meeting was met.

Matters Discussed and Decisions Reached:

Issue 1: Short-Term Project/Convergence

1. Ms. Donoghue stated that a number of constituents, in their comment letters and remarks at the roundtables, asked the Board to abandon the short-term project and to focus on the long-term project on derecognition with the IASB. She stated that the Board has previously discussed this issue and decided to continue the short-term project because of the immediate need to address practice issues with Statement 140.
2. Ms. Donoghue stated that users of financial statements overwhelming support the short-term project and believe that these short-term enhancements, although less than perfect, are necessary to restore market confidence in transferor’s financial statements. Ms. Donoghue stated that many preparers disagree and believe that the costs required to implement the proposed amendments are onerous and outweigh the benefits that would be achieved. She noted that preparers are also concerned about having to change again when they convert to international accounting

standards. She stated that auditors and regulators of financial institutions provided mixed views and suggested a number of enhancements that would improve implementation, which the staff will discuss in more detail later in this meeting.

3. **Staff Recommendation:** The staff recommended that the Board not redeliberate this issue and agrees with users of financial statements that a short-term solution is necessary.
4. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**
5. **Board Comments:** Mr. Linsmeier stated that he does not feel that this was a short-term project, given the number of Exposure Drafts and the length of the project. He also noted that the timetable for a convergent standard would not meet the needs of the markets.
6. Mr. Smith stated that he feels that the need to eliminate the qualifying special purpose entity (SPE) concept overrides the preference for a convergent standard. He noted that the Board is pursuing this project because the needed changes are an emergency case.
7. Ms. Seidman stated that the removal of the qualifying SPE concept is the single most important aspect of this change. She stated that, since there is little risk that the IASB project would add a qualifying SPE concept, any convergent standard would also require the Board to spend more time amending the qualifying SPE rules.
8. Mr. Herz stated that the rules would not need to be amended if there was stricter application of the guidance, which would require that more entities not be considered qualifying SPEs. Mr. Herz noted that the IASB project is not likely to be completed and effective until 2011. Mr. Siegel stated that the project should continue because financial statement users need the improved information provided by these amendments.

9. Mr. Linsmeier stated that the staff should continue to work with the IASB's project team, because what the staff has learned will be beneficial in helping to shape the direction of that project.

Issue 2: No Continuing Involvement

10. Ms. Donoghue stated that some respondents asked the Board to reconsider a no-continuing involvement approach. She noted that input is split between those that favor this model (users) and those that do not (auditors, regulators, and preparers) and that the Board has discussed this issue in the past.
11. **Staff Recommendation:** The staff recommended that this model not be further discussed because no new information has been provided to support reconsideration of this decision.
12. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**
13. **Board Comments:** Ms. Seidman stated that she understands the point of view expressed by proponents of the no-continuing-involvement approach because it provides financial statement users with a clean slate to consider their own assumptions; however, she does not agree that this is an appropriate method of accounting for transfers of financial assets. She further stated that she agrees with the basic concept of Statement 140 that something needs to be legally isolated, because the law actually tracks the economics in this case. Messrs. Smith and Linsmeier agreed with Ms. Seidman.
14. Mr. Siegel stated that the issue was raised by constituents at the roundtable and in discussions with financial statement users; however, he would not ask the Board to redeliberate in light of the overriding concern of quickly completing the project. Mr. Linsmeier noted that he does not see the implementation of a no-continuing-involvement model without considering the concept for other types of transactions and that the implications of this type of model for other types of transactions would not be a desirable accounting model for transfers of financial assets.

Issue 3: Linked Presentation

15. Ms. Donoghue stated that there continues to be some support for linked presentation from users, preparers, and auditors, although the comment letters offered only sparse support for keeping this issue in the current project. She noted that the IASB plans to consider this issue in the longer term derecognition project, but that it has not yet begun to look at the issue in depth. She stated that a major industry organization has assembled a group to consider a linked presentation model and to make a recommendation in this area. She noted that the group's study is ongoing.
16. Ms. Donoghue stated that the staff is concerned with the additional time that a linked presentation concept would require to complete the project and whether linked presentation should be considered solely within the scope of this project or giving consideration to other accounting guidance, such as pension accounting.
17. **Staff Recommendation:** The staff recommended that linked presentation not be redeliberated in this project in the interest of time. Although one major industry group has undertaken a project to provide recommendations on how to make a linked presentation model workable, the Board does not yet have a report from that group on this topic. The staff does not believe it is feasible to complete the short-term project in the first half of 2009 if linked presentation is included.
18. **Board Vote:** The Board voted to redeliberate linked presentation only if the Board receives additional information about a workable model soon enough to complete the short-term project in a timely manner.
19. **Board Comments:** Mr. Smith agreed with the staff's recommendation. Mr. Golden stated that he feels that linked presentation shows promise as an accounting model, but stated that the issue should be considered as a larger project (broader than amending Statement 140). He also noted that the staff is planning to meet with the IASB staff to discuss their views and processes about linked presentation. Ms. Seidman stated she feels that the Board should defer any decision on this topic until after the staff meets with the IASB to discuss the topic.

20. Mr. Linsmeier stated that the Board will have to redeliberate presentation, if not linked presentation. He stated that when presentation is deliberated, linked presentation should be discussed as one of the options. He noted that the Board has not publicly discussed linked presentation. He added that it would be useful to constituents for the Board to present more information about linked presentation and to broadly discuss why it would be problematic.
21. Mr. Golden stated that he believes that linked presentation should be considered within the financial statement presentation project because linked presentation is much more broad than derecognition and consolidation. Mr. Linsmeier agreed with Mr. Golden that linked presentation may be better considered as part of the financial statement presentation project. Mr. Herz stated that the continuing comments raised by constituents are due to the promise of the model. Mr. Herz also noted that additional pressure is caused by how the accounting may affect the regulatory requirements.
22. Messrs. Linsmeier and Herz commented that the linked presentation concept is very complicated. Mr. Herz expressed concern that the model would permit companies to understate their balance sheets by netting assets and liabilities. Ms. Seidman agreed and also noted that not allowing linked presentation could overstate in presenting gross assets and liabilities on the balance sheet.
23. Mr. Golden indicated that the project to amend Statement 140 will be delayed if the Board decides to redeliberate linked presentation. Mr. Smith agreed and expressed concern that consideration of linked presentation would require more time to complete than the Board desires, noting that the project has already been delayed.
24. Mr. Siegel stated that there are two objectives: to complete this project in a timely manner and to have a fulsome discussion of linked presentation as it relates to derecognition, consolidation, pensions, and so forth. Mr. Herz stated that some Board members will attend meetings regarding linked presentation in the near future and, if there is further information provided, that the Board should be open to consider it.

Issue 4: Financial Components Approach and Linked Presentation

25. Ms. Donoghue stated that a few respondents objected to the notion of participating interests and believe it is inconsistent with the fundamentals of the components approach in Statement 140.
26. **Staff Recommendation:** The staff recommended that the Board not reconsider the concept of a participating interest. The staff noted that no new information has been provided that supports redeliberating the concept of a participating interest.
27. **Board Vote:** The Board voted to reconsider the concept of a participating interest. **All Board members agreed.**
28. **Board Comments:** Mr. Linsmeier stated that he does not feel that the intent of the Board was to preserve a components approach in introducing the participating interest model. He noted that derecognizing the entire asset and recognizing a retained interest was not a components approach.
29. Ms. Seidman noted that many respondents' comments noted that they favor retaining a components approach. She expressed concern that economically similar transactions would be accounted for differently under the model. She stated that the IASB seems to be heading toward a components approach and that perhaps the participating interest approach is not the primary problem that the Board should be trying to solve.
30. Mr. Golden noted that the participating interest is an exception to the requirement to transfer an entire financial asset. Mr. Smith agreed with Ms. Seidman and stated that he is troubled by different accounting for economically similar transactions. Ms. Seidman gave an example of an interest only (IO) strip. Mr. Smith stated that the basis for conclusions does not explain why this difference exists.

31. Ms. Donoghue noted that addressing issues of pooling financial assets was an important improvement of the participating interest model. Messrs. Smith and Herz agreed that the Board may agree to the current conclusion, but that the Board should redeliberate the participating interest concept.

Issue 5: Removal of the Qualifying Special Purpose Entity Concept

32. Ms. Donoghue stated that although most of the input the Board received supports the removal of the qualifying SPE, some respondents objected and expressed concern about the impact of subjecting qualifying SPEs to the consolidation guidance under Interpretation 46[®] and the potential “overconsolidation” on the credit markets.
33. **Staff Recommendation:** The staff recommended that the Board not reconsider this issue although there are some drafting issues that the staff will address. The staff does not believe that any new information was received to support reconsideration of this issue
34. **Board Vote:** The Board voted to support the staff’s recommendation. **All Board members agreed.**
35. **Board Comments:** Ms. Seidman recommended that the staff provide examples of derecognition and consolidation analyses of common qualifying SPE structures so the Board can determine whether the requirements are operational.

Issue 6: Interrelation of Consolidation and Derecognition Analyses—Intercompany Transfers

36. Mr. Sperry stated that the proposed amendment to Statement 140 requires that the transferor consider arrangements by both itself and the consolidated affiliates included in the financial statements being presented to evaluate isolation and effective control. He noted that many respondents are concerned that this guidance would preclude sale accounting for transfers between a parent and a subsidiary, or transfers between subsidiaries even on an entity’s standalone financial statements.

The staff clarified that an entity would only consider the entities presented in the financial statement

37. **Staff Recommendation:** The staff recommended that the Board not redeliberate this issue at a future Board meeting. The staff believes that this issue can be addressed through drafting changes.
38. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**
39. **Board Comments:** Mr. Linsmeier questioned if constituents were only addressing standalone financial statements. Mr. Sperry stated that constituents were also concerned that members of a consolidated group would be unable to meet the legal isolation criteria. Mr. Golden agreed that this is a significant issue to clarify.

Issue 7: Interrelation of Consolidation and Derecognition Analyses—Order of Analysis

40. Mr. Sperry stated that the proposed amendment to Statement 140 does not require that a specific order be followed when an entity evaluates derecognition and consolidation accounting. He noted that some respondents feel that the proposed amendments to Statement 140 imply a certain order in which an analysis must be performed. He also noted that other respondents asked the Board to clarify in what order the analyses should be performed.
41. **Staff Recommendation:** The staff recommended that the Board not redeliberate this issue. The staff noted that the Board has previously decided not to address this issue. The staff stated that the order in which the analyses are performed should depend upon the facts and circumstances of the transfer and the entities involved in the transfer. The staff recommended that this issue be addressed through drafting improvements.
42. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**

43. **Board Comments:** None.

Issue 8: Legal Isolation

44. Mr. Sperry stated that respondents to the Exposure Draft generally support the changes to the isolation guidance; however, he also noted that some respondents asked that the Board expand the implementation guidance to include more examples about how to apply it in additional jurisdictions such as the United Kingdom and institutions subject to receivership under various banking regulatory regimes in the United States. Mr. Sperry also stated that some respondents asked that the implementation guidance mirror the auditing guidance in AU Section 9336, “Using the Work of a Specialist: Auditing Interpretations of Section 336.” He noted that a few also asked for a more expansive discussion in the implementation guidance on how to do a legal analysis in various specific situations.

45. **Staff Recommendation:** The staff recommended that the Board not redeliberate these issues because they have been previously debated by the Board and respondents provided no new relevant information since related Board decisions were made. The staff stated that certain issues raised in the isolation comments can be clarified in drafting.

46. **Board Vote:** The Board voted to support the staff’s recommendation. **All Board members agreed.**

47. **Board Comments:** None.

Issue 9: Differences in Effective Control

48. Mr. Yust stated that some respondents commented that it was inappropriate to require a transferor to consolidate assets in accordance with Interpretation 46(R) if the transferor accounted for the transfer as a sale because the transferor determined that it did not maintain effective control over those assets in applying Statement 140. He stated that other respondents questioned whether those differences could lead to any unintended consequences or result in implementation issues.

49. Mr. Yust noted that the Board previously discussed this issue and understood that there would be differences in the definition of control as Statement 140 relates to control over an asset while Interpretation 46(R) relates to control over an entity. The staff also noted that the Board previously discussed paragraph 9(c) of Statement 140 prior to most of its discussion on control in Interpretation 46(R).
50. **Staff Recommendation:** The staff agreed that there are differences in the definitions of control; however, the staff stated that the Board should understand those differences in order to assess whether any of the concepts of control in Interpretation 46(R) should be incorporated into the redeliberations of paragraph 9(c) in Statement 140.
51. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**
52. **Board Comments:** Ms. Seidman agreed and noted that the results should be most aligned when the only assets that an entity holds are the transferred financial assets.

Issue 10: Paragraph 9(c)(3)

53. Mr. Yust stated that the majority of respondents' comments on effective control were related to paragraph 9(c)(3). He stated that most of those comments stated that paragraph 9(c)(3), as currently drafted, is not clear, is not operational, or is overly subjective. He further stated that others questioned the relevance of even including a determination of whether the transferee is constrained. He also noted that several alternatives were proposed, including deleting paragraph 9(c)(3) in its entirety.
54. **Staff Recommendation:** The staff recommended the Board redeliberate these issues at a future Board meeting.
55. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**

56. **Board Comments:** Mr. Herz agreed with the staff's recommendation and further stated that the most recent version of the IASB's model considers the transferee perspective and, therefore, should be considered in the FASB's model as well.

Issue 11: Ability to Bid on a Transferred Financial Asset

57. Mr. Yust stated that many respondents questioned the amendments to paragraph 53 in the proposed Statement, which discusses whether the transferor maintains effective control by maintaining a residual interest if it has the ability to repurchase the transferred financial assets. He also stated that while several respondents agreed that effective control was maintained if the transferor held 100 percent of the residual interest and had the ability to bid on the transferred financial asset, they questioned whether the transferor would be deemed to maintain effective control if the transferor maintained only a portion of the residual interest.
58. **Staff Recommendation:** The staff recommended the Board redeliberate these issues at a future Board meeting.
59. **Board Vote:** The Board voted to redeliberate the issues related to effective control. All Board members agreed.
60. **Board Comments:** Mr. Herz did not agree with the staff's recommendation. He stated that this determination would depend on the facts and circumstances of the transaction.

Issue 12: Guaranteed Mortgage Securitizations

61. Mr. Yust stated that the Board previously decided to remove the special provisions in Statement 140 and in FASB Statement No. 65, *Accounting for Certain Mortgage Banking Activities*, for guaranteed mortgage securitizations. He stated that most respondents either did not comment about the change or agreed with them. Mr. Yust noted that some respondents believe that all or some of the special provisions should be retained. He continued that some respondents also noted that the amendments to Interpretation 46(R) would require the guarantor in a guaranteed

mortgage securitization to consolidate the trust involved in the transfer. He stated that some respondents questioned how the removal of the guaranteed mortgage securitization would interact with the amendments to Interpretation 46(R).

62. **Staff Recommendation:** The staff recommended that the Board redeliberate this issue at a future Board meeting.
63. **Board Vote:** The Board voted not to redeliberate this issue. All Board members agreed. However, the Board directed the staff to use guaranteed mortgage securitizations (GMS) as an example to bring to the Board as the projects to amend Statement 140 and Interpretation 46(R) continue.
64. **Board Comments:** Mr. Herz and Ms. Seidman stated that the issue is that two companies may report the loans and it is also a classification issue since the guaranteed loans legally become securities. Mr. Golden asked what would cause a GMS to fail sale accounting. Mr. Yust responded that constituents are concerned about legal isolation and the requirement that a restriction on the transferred financial assets primarily benefit the transferee.
65. Mr. Golden stated that any change should be considered for the model as a whole, not through an exception. Messrs. Linsmeier and Herz agreed.
66. Ms. Donoghue stated that the chief concern is that economically similar transactions involving assets other than mortgages occur and do not qualify for the exception. She stated that the staff's intent was to remove as many exceptions as possible.

Issue 13: Measurement of Beneficial Interests

67. Mr. Yust stated that some respondents support measuring all beneficial interests at fair value as a simplification of the current hybrid model. He noted that other respondents do not support the change in measurement and are concerned with the potential for abuse because a transferor could recognize a gain on a transfer of financial assets in which the transferor obtained most of the beneficial interests.

68. **Staff Recommendation:** The staff recommended that the Board not redeliberate this issue. The staff noted that the Board previously addressed this issue and that no comments raised by respondents were new and would merit further reconsideration by the Board
69. **Board Vote:** The Board voted to redeliberate this issue at a future Board meeting. **All Board members agreed.**
70. **Board Comments:** Ms. Seidman stated that she does not agree with the staff's recommendation. She stated that this is similar to the participating interest issue in that the measurement of beneficial interests at fair value also creates a scenario in which there would be differing accounting for economically similar transactions.
71. Mr. Golden agreed that the staff should study the issue. Mr. Smith stated that, depending on what the Board decides the participating interest should be, this issue may need to be revisited.

Issue 14: Partial Sales

72. Ms. Barker stated that the Board has already decided to redeliberate participating interests and stated that the issue of partial sales was similar.
73. **Staff Recommendation:** The staff recommended the Board redeliberate this issue at a future Board meeting.
74. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**
75. **Board Comments:** None.

Issue 15: Reconsolidation of Transferred Assets

76. Ms. Barker stated that some Board members asked the staff to analyze whether additional revisions to Issue 02-9 and paragraph 55 of the proposed Statement, beyond those included in the Exposure Draft, are necessary. The staff agrees that further analysis is needed.
77. **Staff Recommendation:** The staff recommended the Board redeliberate this issue at a future Board meeting.
78. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**
79. **Board Comments:** Ms. Seidman asked Ms. Barker to clarify the issue for those who may not be familiar with the topic. Ms. Barker replied that Issue 02-9 and paragraph 55 of the proposed Statement relate to whether a transferor should reconsider the accounting for transferred financial assets after the occurrence of triggering events.

Issue 16: Disclosures

80. Mr. Hood stated that most respondents generally support the enhanced disclosures. However, many respondents repeated the comments that they gave for the Exposure Draft of FSP 140-4 and FIN 46(R)-8. He also stated that the Board made a number of changes to the Statement 140 disclosure requirements during its redeliberations on FSP 140-4, including a reorganization of the existing disclosures. He noted that some of those changes were intended to be effective for the interim, while others were intended to be permanent.
81. **Staff Recommendation:** The staff recommended that any changes required by other decisions should be reevaluated during redeliberations of the amendments to Statement 140 and Interpretation 46(R). In addition, the staff recommended that the Board redeliberate the disclosure requirements, based on the Board's decisions

related to FSP 140-4 and comments made by constituents during the comment period.

82. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**

83. **Board Comments:** None.

Issue 17: Implicit Arrangements

84. Ms. Donoghue stated that the Board discussed whether to include implicit arrangements in the definition of continuing involvement in its redeliberations on the disclosures required by FSP 140-4. She stated that the Board decided to include in the definition of continuing involvement certain unwritten arrangements for purposes of that FSP that pertain specifically to disclosures.

85. **Staff Recommendation:** The staff recommended that the Board consider including similar language within the principle (new paragraph 8A) of the Exposure Draft that provides the overall objective of the criteria for sale accounting.

86. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**

87. **Board Comments:** Mr. Seidman stated that this would highlight that implicit arrangements should be considered for the determination of legal isolation. Ms. Donoghue clarified that including implicit arrangements in the principle would require any implicit arrangements to be considered throughout the sale accounting analysis depending on the circumstances of the transfer. She added that the staff believes that it is more appropriate to discuss implicit arrangements in the principle rather than within a footnote attached to the disclosure requirements. Mr. Siegel agreed that consideration of implicit arrangements would affect both legal isolation and effective control.

Issue 18: Effective Date

88. Ms. Donoghue stated that the staff does not yet know whether it will meet the proposed timetable. She stated that the staff does not believe that the effective date will need to be redeliberated at this time.
89. **Staff Recommendation:** The staff recommended that the Board not redeliberate the effective date of the standard unless redeliberation extends beyond the current estimated timetable.
90. **Board Vote:** The Board voted to support the staff's recommendation. **All Board members agreed.**
91. **Board Comments:** Mr. Herz requested that the staff continue to maintain close contact with the banking regulators to keep them aware of the project's progress.

Follow-up Items:

None.

General Announcements:

None.