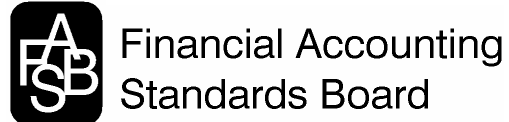


MINUTES



To: Board Members
From: Varian (ext. 353)
Minutes of Board Meeting-June 15
Subject: (Application of 40(b) and 40(c) of Statement 140) **Date:** July 6, 2005
cc: Leisenring, L. Smith, Bielstein, Golden, Donoghue, Laurenzano, Lusniak, E. Smith, Lott, Mahoney, Swift, Polley, Petrone, Gabriele, Bergstrom, Varian, Vernuccio, FASB Intranet

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 or Interpretation.

Topic: Agenda Request on Potential FSP: Clarification of the application of paragraphs 40(b) and 40(c) of Statement 140

Basis for Discussion: Memorandum Dated June 2, 2005

Length of Discussion: 10:35 p.m.to 10:45

Attendance:

Board members present: Herz, Batavick, Crooch, Seidman, Shipper, Trott, Young

Board members absent: None

Staff in charge of topic: Laurenzano

Other staff at Board table: L. Smith, Lott, Donoghue, Lusniak, E. Smith, Bergstrom, Varian

Outside participants: Leisenring

Summary of Decisions Reached:

The Board decided to add to its agenda a project to clarify, through the issuance of an FSP, that the accounting guidance provided in paragraphs 40(b) and 40(c) of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, relative to the notional amount of passive derivative instruments held by qualifying special-purpose entities (QSPE) is required to be met upon initial establishment of the QSPE only.

Objective of Meeting:

To decide whether to add to the Board's agenda a project that clarifies the application of paragraphs 40(b) and 40(c) of Statement 140.

Matters Discussed and Decisions Reached:

1. Mr. Laurenzano began by asking the Board to consider adding to its agenda a project to clarify the application of the accounting guidance provided by paragraphs 40(b) and 40(c) of Statement 140 relative to the notional amount of passive derivative instruments held by qualifying special-purpose entities (QSPEs). He stated that paragraph 35(c)(2) requires that a QSPE may hold only passive derivative instruments that pertain to beneficial interests issued or sold to third parties. Paragraph 40 describes the conditions required for a passive derivative to pertain to beneficial interests issued by a QSPE, and states the following:

A derivative financial instrument pertains to beneficial interests (other than another derivative financial instrument) issued only if it:

- a. Is entered into (1) when the beneficial interests are issued by the qualifying SPE to parties other than the transferor, its affiliates, or its agents or sold to such other parties after being issued by the qualifying SPE to the transferor, its affiliates, or its agents or (2)

when a passive derivative financial instrument needs to be replaced upon occurrence of an event or circumstance (specified in the legal documents that established the SPE or created the beneficial interests in the transferred assets that it holds) outside the control of the transferor, its affiliates, or its agents, for example, when the counterparty to the derivative defaults or is downgraded below a specified threshold

b. Has a notional amount that does not initially exceed the amount of those beneficial interests and is not expected to exceed them subsequently

c. Has characteristics that relate to, and partly or fully but not excessively counteract, some risk associated with those beneficial interests or the related transferred assets.

2. Mr. Laurenzano explained that the FASB staff has received inquiries regarding the application of paragraph 40's requirements to scenarios in which the amount of the passive derivative exceeds the amount of beneficial interests held by third parties due to:

- Unexpected prepayment of the QSPE's assets, or
- Trading and market making activities conducted by the transferor or its affiliates.

Constituents have encouraged the FASB staff to clarify whether the guidance in paragraphs 40(b) and 40(c) are tests to be complied with upon initial establishment of the QSPE or are tests required to be met on a continual basis. The consideration of the requirements as a continual test would cause many QSPEs to no longer be qualified due to common activities.

3. Mr. Laurenzano recommended that the Board add a project to its agenda to issue an FSP to clarify that the requirements of 40(b) and 40(c) must be met upon initial establishment of the QSPE only. This clarification will permit the

existing trading and market making activities of transferors and affiliates to continue without impacting the status of the QSPE.

4. Ms. Schipper stated that she agreed with the staff recommendation. She further stated that as part of clarifying paragraphs 40(b) and 40(c) it should be stated that there must be a basis provided for how the subsequent changes in beneficial interest due to trading and market making activities are consistent with the phrase *is not expected to subsequently* in paragraph 40(b).
5. Mr. Trott agreed with the staff recommendation. However, he questioned whether this clarification could be included in the Exposure Draft related to QSPEs. Mr. Laurenzano responded that issuing an FSP on this issue will expedite the process as it pertains to paragraphs 40(b) and 40(c). He noted that constituents have requested prompt clarification be provided to this current practice issue.
6. Mr. Batavick and Ms. Seidman agreed with the staff recommendation. Ms. Seidman suggested that the FSP include a reminder people that within the definition of a QSPE all of the activities have to be prescribed and significantly limited. She stated that she would expect that description to incorporate an entity's proposed response to a case where the initial estimate does not prove accurate. An entity would be subject to all of the constraints that apply to other assets held in the QSPE.
7. All Board members agreed with the staff recommendation. The staff will begin drafting an FSP that clarifies that the requirements of paragraphs 40(b) and 40(c) are to be complied with upon initial establishment of the QSPE only.

Follow-up Items:

None.

General Announcements:

None.

