

KPMG LLP 757 Third Avenue New York, N.Y. 10017 Letter of Comment No: 2
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August 22, 2005

Mr. Lawrence W. Smith, Director Technical Application and Implementation Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

RE: Proposed FASB Staff Position FAS 140-c, "Clarification of the Application of Paragraphs 40(b) and 40(c) of FASB Statement No. 140"

Dear Mr. Smith:

We appreciate the opportunity to comment on the proposed FASB Staff Position FAS 140-c, "Clarification of the Application of Paragraphs 40(b) and 40(c) of FASB Statement No. 140." We agree that additional guidance is needed on the impact of unexpected events occurring after the inception of a qualifying SPE that result in the notional amounts of passive derivatives exceeding the amount of third-party beneficial interests until the Board completes its amendments to FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities. However, we believe that certain provisions of the proposed FSP should be clarified.

Paragraph 10 of the proposed FSP requires enterprises to estimate purchases of beneficial interests by the transferor, its affiliates, or its agents in connection with market-making and trading activities in determining whether the notional amounts of derivatives are expected to exceed the amount of beneficial interests held by third parties. It is not clear why the Board proposes to limit the analysis of purchases of beneficial interests to market-making and trading activities. Accordingly, we suggest that the Board expand the guidance in paragraph 10 to include *all* purchases of beneficial interests by the transferor, its affiliates, or its agents. Otherwise, it would be necessary for the Board to clearly define market-making and trading activities.

In addition to the foregoing, the last sentence of paragraph 10 would be clearer if the Board (i) replaced the phrase "sales by outside parties" with "purchases by the transferor, its affiliates or its agents" and (ii) replaced the phrase "consistent with the requirements of paragraph 36 of Statement 140" with "at least 10% of the fair value of its beneficial interests as required by paragraph 36 of Statement 140."



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As discussed in paragraphs 187 and 188 of Statement 140, the Board included the guidance in paragraphs 40(b) and 40(c) of Statement 140, in part, to address concerns about transferors using qualifying SPEs to enter into derivative transactions to avoid the accounting requirements of FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, for those derivatives. However, it is our understanding that the Exposure Draft, Accounting for Certain Hybrid Financial Instruments (the "Hybrid Instruments Exposure Draft"), which would eliminate the exemption from applying Statement 133 to beneficial interests in securitized financial assets, is intended to alleviate those concerns. In the Exposure Draft (revised), Accounting for Transfers of Financial Assets (the "OSPE Exposure Draft"), the Board has proposed to permit qualifying SPEs to hold passive derivative financial instruments that pertain to all beneficial interests, not just those held by third parties. If finalized, the guidance in the QSPE Exposure Draft with respect to paragraph 40 of Statement 140 would impact the guidance in this FSP and we encourage the Board to expedite its finalization and issuance. In that regard, we believe the proposed amendment to paragraph 40 of Statement 140 should be included in the final Hybrid Instruments Statement, ensuring that the applicability of that amendment to Statement 140 coincides with the applicability of the interrelated amendment to paragraph 14 of Statement 133, and can be issued in advance of the final guidance in the QSPE Exposure Draft if necessary.

Paragraph 12 of the proposed FSP requires prospective application of the FSP for both new and existing SPEs after the date the FSP is finalized. Both the QSPE Exposure Draft and Statement 140 allow for grandfathering of formerly qualifying SPEs as long as those entities do not receive additional assets or issue additional beneficial interests other than those they were previously committed to receive or issue as a result of commitments to parties other than the transferor. Likewise, we believe that the provisions of the proposed FSP should apply prospectively for new SPEs and for existing SPEs that receive additional assets or issue additional beneficial interests (other than those they were previously committed to receive or issue) after the effective date of the FSP. Therefore, existing SPEs that do not receive additional assets or issue additional beneficial interests after the effective date should be explicitly grandfathered from the provisions of the FSP.



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If you have any questions about our comments or wish to discuss any of the matters addressed herein, please contact either Mark Bielstein at (212) 909-5419 or Kimber Bascom at (212) 909-5664.

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Sincerely,

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