

Letter of Comment No: 7
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Sent via post and email to director@fasb.org

Re: FSP FAS 140-c

Credit Suisse Group appreciates the opportunity to comment on the Financial Accounting Standards Board's proposed FASB Staff Position (FSP) No. FAS 140-c, "Clarification of the Application of Paragraph 40(b) and 40(c) of FASB Statement No. 140." Credit Suisse Group is listed as a foreign private issuer with the Securities and Exchange Commission and prepares annual US GAAP financial statements.

While we appreciate the FASB's attempt to address this issue, we do not believe that the FSP will provide any simplification in the application of paragraphs 40(b) and 40(c) to qualifying special purpose entities (SPEs) as it relates to market making or secondary trading activities. Further, if issued as drafted, it could add further complexity to the analysis.

The objective of this project, as set out in the project summary on the FASB website, is "to clarify...that the accounting guidance provided in paragraphs 40(b) and 40(c)...is required to be met upon initial establishment of the qualifying SPE only." More specifically, the FSP is to clarify for derivatives held by a qualifying SPE the meaning of "is not expected to exceed [the amount of outside beneficial interests] subsequently" in paragraph 40(b).

With regard to unexpected prepayment resulting in a derivative notional that might exceed outside beneficial interests, the FSP requires a "comprehensive analysis" of initial expectations to establish a basis for initial qualification of the SPE and to act as a point of demarcation for acceptable "unexpected prepayment." Once a "comprehensive analysis" is performed, unexpected prepayments "would not impair the qualified status of the qualifying SPE."

We believe the FSP clarifies that the application of paragraph 40(b) as it relates to prepayment risk is an initial test rather than a recurring test assuming a "comprehensive analysis" has been completed. We believe that reasonable market place participants already make an initial assessment supporting an expectation that derivative notional amounts will not exceed outside beneficial interests (excluding any interests held as a result of market making and secondary trading activity). However, we also believe use of the term "comprehensive analysis" will create a de facto documentation requirement that

is not part of current processes and procedures. Therefore, we recommend eliminating the phrase “comprehensive analysis” and replacing it with language that implies that the risk of the derivative versus the risk of the assets has been appropriately considered. Additionally, we believe the phrase “comprehensive analysis” will cause difficulties with external auditors, as it will establish a very high threshold.

Market Making and Secondary Trading

The FSP requires a similar “comprehensive analysis” for market-making or trading activities. While we believe the wording of the first and second sentences of paragraph 10 is unclear in the FSP, it is our understanding that any expected level of market making or trading activity that would result in a derivative notional exceeding outside beneficial interests would disqualify an otherwise qualifying SPE. While this disqualification may be conceptually consistent with the definition of a passive derivative and a qualifying SPE in Statement 140, it is practically unreasonable given the requirements of rating agencies and other participants in the securitization market.

One basic flaw with attempting to apply the “not expected to exceed subsequently” concept to market making and secondary trading activity is that such activity is expected. Outside interest holders who independently decide to sell an interest in a qualifying SPE may often consider the transferor as the most advantageous market in which to sell their interests. In part, this is due to the level of knowledge and familiarity with the interests held by the transferor as well as keeping client relationships and not with the intention to hold for a long period of time. Market making or secondary trading is not performed pursuant to agreement of pre arrangement. Additionally, market making or secondary trading is not contemplated at initiation as a means of circumventing the requirements of Statement 140. Rather, market making or secondary trading is a business activity conducted by transferors in their broader capacity as a participant in the financial markets.

We believe an alternative approach should be adopted that would exempt market making or trading activity from disqualifying an otherwise qualifying SPE, provided that there are no repurchases that were explicitly contemplated at the inception of the transaction. We believe the initial analysis should indicate that no pre-existing arrangement exists that would require acquisition of sold interests and that there is no intent to reacquire previously sold interests as part of market making or secondary trading activity for the purpose of otherwise circumventing the requirements of Statement 140.

Other Comments

If the Board does not accept our alternative approach, we have additional comments on the proposed FSP as follows.

We are unclear what the Board is seeking in the way of a “comprehensive analysis” as it relates to market making and secondary trading activities. While past experience with similar transactions may form the basis of a reasonable assessment, differences between transactions will necessarily result in significant assumptions that might preclude a transferor from concluding, with any certainty, as to the expected level of market making or secondary trading. For the reason stated above, it will be difficult in many cases to establish the reasonableness of the expected level of market making or secondary trading.

The FSP does not define market making and secondary trading activity in such a way as to provide relief for the issue it was designed to address. Part of this confusion is raised by the concept of the transferor, its affiliates, or its agents owning, “for a short period of time” some of the beneficial interests issued to outside parties. It is also unclear what the Board believes to be a short period of time and how such a period of time would be assessed when market making activity results in a continual, but changing interest being held by the transferor. That is, would an analysis of a “short period of time” require a specific identification of interests obtained and sold even when the positions purchased/sold are fungible?

Paragraph 6 implies that trading activities are permitted for transferors or their affiliates “because such interests are typically highly rated.” Trading activity is not necessarily limited to just highly rated interests. If the Board believes there is an important distinction that should receive recognition in accounting based on the rating of the interests subject to trading activity it should be clarified in the FSP. Otherwise the reference to highly-rated should be deleted.

The FSP addresses excessive derivative notional amounts compared to outside beneficial interests resulting from “unexpected prepayment”. There may be other unexpected events that could cause similar situations. It is unclear if the FSP would apply to other unexpected events. It is also unclear whether an unexpected event that occurs, that was not part of a comprehensive analysis performed at initiation of the transaction because the event was unexpected, would be subject to the relief provided to “unexpected prepayment”. This point should be clarified in the FSP.

Throughout the FSP, we believe the term “sponsor” should be replaced with the term transferor to avoid confusion.

Transition and Effective Date

We believe the effective date and transition provisions in the proposed FSP are not operational. As this FSP requires a “comprehensive analysis” at initiation of a transaction, and as market making or secondary trading was never considered previously it is impossible for existing SPEs to apply the provisions of this FSP. Further, the clarification in this FSP implies that previous practice with regard to market making or secondary trading was inappropriate and, therefore, potential exists for the need to restate financial statements. We believe that a more appropriate transition provision would be provisions commonly used when requirements to be considered qualifying SPEs are changed. That is, the provisions should be applied to new qualifying SPEs or qualifying SPEs issuing new beneficial interests.

Lastly, we understand the Board believes this FSP is only a temporary solution to the issue raised and that a permanent solution exists in the recently issued exposure draft of qualifying SPEs. While we agree that the changes to paragraphs 35 and 40 proposed in the exposure draft would eliminate the issues surrounding market making or secondary trading activities, we are not sanguine that the exposure draft will result in a final standard in the near future, or that the changes proposed to paragraphs 35 and 40 will survive redeliberation by the Board. For these reasons, we believe a more comprehensive

solution to the market making and secondary trading issues, along the lines of the alternative proposed above, be adopted by the Board in this FSP.

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We thank the Board for their attention to our comments. We are available to further discuss these points. Please do not hesitate to contact Eric Smith at eric.smith@csfb.com or (212) 538-5984 with any questions or comments.

Sincerely,

Rudolf Bless
Managing Director, Chief Accounting Officer

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