

August 22, 2005

Letter of Comment No: 4
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Date Received:

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

Dear Larry:

We appreciate the opportunity to comment on the above-referenced FSP. We believe the FSP provides helpful guidance in evaluating whether the criteria in paragraph 40 of FASB Statement No. 140, *Accounting for Transfers of Financial Assets and Extinguishments of Liabilities* (Statement 140), have been met for new qualifying SPEs. We do not support finalizing the FSP as it is currently proposed, however, because we believe application of its provisions may result in more existing SPEs losing their qualifying status because of market-making or trading activities conducted by the transferor, its affiliates, or its agents, a result we had thought the Board was not seeking in issuing the FSP. We generally agree with the FSP's provisions on anticipating prepayments in the initial comprehensive analysis. The remainder of this letter discusses our concerns with the FSP's provisions on market-making or trading activities in further detail.

New Qualifying SPEs

We believe the proposed FSP provides helpful guidance in determining whether a new SPE is qualifying because paragraph 40 of Statement 140 could be read to indicate that any ownership—even for a short period—of a qualifying SPE's beneficial interests by a transferor, its affiliates, or its agents would cause the SPE to lose its qualifying status and be consolidated by the transferor. And, because Statement 140's conditions are to be evaluated on an ongoing basis, the SPE could once again become qualifying upon disposal of that beneficial interest, potentially resulting in the transferor reconsolidating and deconsolidating the SPE numerous times, which we do not believe improves financial reporting. Further detracting from the goal of enhanced financial reporting is the fact that upon the SPE losing its qualifying status, a primary beneficiary may be required to consolidate and deconsolidate that now variable interest entity

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pursuant to FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (revised December 2003) (FIN 46R), although we question how an investor in a purported qualifying SPE would even know that FIN 46R's provisions were effective because of a transferor's market-making activities. For these reasons, we agree with the proposed FSP's provisions for purchases by the transferor, its affiliates, or its agents in connection with market-making or trading activities for new qualifying SPEs.

Existing Qualifying SPEs

As proposed, the FSP would require that in order for an SPE to be qualifying, the transferor consider purchases of beneficial interests through market making or trading activities as part of the comprehensive analysis of whether, at the time the beneficial interests of the qualifying SPE are issued, the notional amounts of the derivatives are expected to exceed the amount of beneficial interests outside the control of the transferor, its affiliates, or agents subsequently.

We do not believe that all transferors have performed such a comprehensive analysis for existing qualifying SPEs as it was not clear to them prior to the issuance of the FSP that such an analysis was required. As a result, for those transferors, their affiliates, or their agents that engage in market-making or trading activities, the notional amount of the derivatives will likely exceed the amount of beneficial interests outside the control of the transferor, its affiliates, or agents, resulting in the existing SPE losing its qualifying status after the date of the FSP is finalized. We do not believe this is a result the Board had intended in issuing the FSP.

We believe the Board either should (1) grandfather existing qualifying SPEs or (2) use the rebalancing concept discussed in paragraph 11 of the proposed FSP to provide for transition for unexpected prepayment of the qualifying SPE's assets or purchases of beneficial interests through market making or trading activities. The Board should consider whether to permit transferors to existing qualifying SPEs to perform the comprehensive analysis discussed in the proposed FSP and perform any rebalancing or remedial action by a certain date in order for the existing SPE to retain its qualifying status (assuming that the qualifying SPE's legal or other documents permit such a rebalancing or that amending the qualifying SPE's legal documents is practicable).

Previously Issued Financial Statements

We understand that some constituents have raised concerns that because the proposed FSP is an accommodation for market-making and trading activities, a transferor, its affiliates, or its agents that previously engaged in normal market making or trading activities with no automatic adjustment of the derivative notional amounts should restate its financial statements to reflect control of the previously transferred assets during the time that the beneficial interests were held. We share that concern and recommend the Board explicitly provide transition for existing qualifying SPEs that would not require restatement of previously issued financial statements for the concepts discussed in the FSP.

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We would be pleased to meet with the Board or its staff to discuss our comments in further detail.

Very truly yours,

Ernst + Young LLP