Letter of Comment No: 26
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P.O. Box 15021 Albany, NY 12212-5021 (1021 Watervliet Shaker Rd., Albany 12205) www.empirecorp.org Christiane Gigi Hyland Senior Vice President, General Counsel

(518) 292-3803 800-253-0053, ext. 3803 Fax: (518) 292-3755 e-mail: ghyland@empirecorp.org

VIA E-MAIL: director@fasb.org

October 10, 2005

Technical Director—File Reference 1225-001 Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Via E-mail: director@fasb.org

Re.: Accounting for Transfers of Financial Assets Exposure Draft (Revised)

Dear Sir or Madam:

Empire Corporate Federal Credit Union (Empire) appreciates the opportunity to comment on the he Financial Accounting Standards Board's (FASB) revised Exposure Draft (proposed Statement) – Accounting for Transfers of Financial Assets (amendment of FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities). The proposed Statement would make changes to the accounting rules that govern loan participations and state how loan participations should be conducted to qualify for accounting treatment as a sale. Empire is proud to count over 1,000 credit unions as members. Empire currently conducts loan participations through a waiver granted by the National Credit Union Administration. In addition, Empire's member natural person credit unions also engage in loan participation activity.

As a primary source of liquidity for credit unions, Empire provides loan participation arrangements as an effective balance sheet management tool for credit unions to manage liquidity and diversify geographic risk. Typical loan participation transactions in which Empire engages include where the originating credit union sells a 90% participation in its loans and retains the servicing rights as well as a 10% interest in the loans. All the rights to the underlying loans are conveyed consistent with the respective ownership percentages of 90% and 10%. However, the originating credit union may retain a small subordinated interest, generally 5%, in the pool of loans against which losses are initially allocated and will provide reserves for the expected losses, which is usually significantly less than the limited subordination.

Empire echoes the comments provided by its primary trade association, the Association of Corporate Credit Unions, on FASB's proposed Statement. In particular, Empire is concerned with the restrictive

definition of "participating interest" in the proposed Statement. To employ sales accounting treatment, a participation interest could involve absolutely no recourse or subordination to the originator. This proposed Statement would effectively eliminate loan participations with recourse as a business product. Empire and natural person credit unions that want to conduct loan participations with recourse would be forced to either restructure the deal so there is no recourse to the originator, or else run the transaction through an SPE. Empire cannot endorse a proposal that could lead to either outcome.

Further, Empire is concerned with the effective date and transition provisions in the proposed Statement. Under the proposal, if a credit union has an ongoing obligation in connection with a loan participation that does not meet the surrender of control criterion dealing with isolation (for example, a limited recourse obligation), then when the final Statement is issued the credit union may be required to reclassify these transactions as secured borrowings rather than sales. The credit unions that entered into loan participation agreements with recourse certainly did so with the expectation that they could show the transaction on their balance sheets as sales. To retroactively change the accounting treatment on the books could cause the credit union's balance sheet to suddenly be inflated; and the credit union would wind up with decreased net worth. Consequently, we encourage FASB to amend this provision so that the rule is effective prospectively and not retrospectively.

However, if FASB determines that the provision should remain retroactive in the final rule, then we request a delay in the effective date of the final rule so that credit unions and other institutions have ample time to implement this provision. Such a delay would also provide institutions with time to set up SPEs if they so choose.

Empire again thanks FASB for the opportunity to comment on this important proposal. Please feel free to contact me at 800/253-0053, ext. 3803 with any questions you may have.

Sincerely,

Christiane G. Hyland, Esq. SVP, General Counsel

cc: Mike Canning, Executive Director, ACCU

Mike Carter, Regulatory Advocacy Coordinator, NYSCUL

Kimberly Dewey, Associate Director, Regulatory Affairs, NAFCU