



Letter of Comment No: 91
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Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: File Reference No. 1082-300
Exposure Draft on Consolidation of Variable Interest Entities, a
modification of FASB Interpretation No. 46

Ladies and Gentlemen:

The American Securitization Forum¹ and The Bond Market Association² thank the Financial Accounting Standards Board for this opportunity to comment on the Exposure Draft referenced above.

On the heels of multiple deferrals, modifications, re-exposures, FSPs, amendments, divergence rather than convergence and the prospect of substantial further deliberations, all occurring within a very compressed period of time, we are writing to urge the Board to adopt the alternative views expressed by the three dissenting board members. In particular, the Board should defer the effective date of Interpretation 46 for all entities until the Board has clarified the many significant outstanding issues that are not addressed in this proposed modification and rely on the more comprehensive disclosures about involvement with variable interest entities that have been adopted since the issuance of Interpretation 46 (FIN 46).

There are numerous issues that have arisen in the course of implementing FIN 46 that call seriously into question whether this guidance has provided any improvement to reporting for financial asset securitizations. One such issue that demonstrates the

¹ The American Securitization Forum (the "ASF"), an adjunct forum of The Bond Market Association (the "Association"), is a broadly-based professional forum of participants in the U.S. securitization market. Among other roles, the ASF members act as issuers, underwriters, dealers, investors, servicers and professional advisors working on securitization transactions. The views expressed in this letter are based upon input received from a broad range of ASF members including members of the ASF Accounting and Tax Subcommittee. More information about the ASF, its members and activities may be found at its internet website, located at www.americansecuritization.com.

² The Association represents securities firms and banks that underwrite, distribute and trade debt securities domestically and internationally. The Association's member firms account for in excess of 95 percent of all primary issuance and secondary market trading activity in the U.S. debt capital markets, including the issuance, underwriting and trading of securitized instruments. The views expressed in this letter reflect input received from a broad range of Association members who are active in the debt markets, including members of the Association's Mortgage and Asset-Backed Division and Accounting Policy Committee. More information about the Association and its members may be found at its internet website, located at www.bondmarkets.com.



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depth of the problem is that in attempting to apply existing guidance, we understand that reporting companies are reaching outcomes (whether intended or not) that require them to report losses (or gains) in their consolidated financial statements in circumstances where it is *impossible* for those companies ever to incur such losses (or obtain such gains).

The proposed modification of FIN 46, including the proposed modifications to paragraph 8 to a focus on “long term return to variable interests” does not clarify or simplify its implementation or reduce the possibility that different outcomes are possible from the same facts. FIN 46 and the in-process guidance has materially disrupted major segments of the capital markets. It was recently reported that global securitization issuance now exceeds \$1 trillion annually. However, notwithstanding the growing size and importance of this market, the continuing uncertainty surrounding implementation of FIN 46 has thrown hundreds of global companies into extensive and extremely costly efforts directed at deciphering the required formulations that are part of the original pronouncement, part of a subsequent FSP or part of a proposed amendment/modification of FIN 46 or FAS 140, all without any corresponding improvement in financial reporting.

Many of the proposed rules and guidance, frankly, do not work or do not serve the public interest in achieving meaningful and understandable financial reporting. Many examples have been recited in third quarter public filings. We do not believe that the investor community is well-served by reporting companies applying accounting rules, but feeling compelled in doing so to describe their irrelevance or the illogical nature of the results of their implementation.

We are very concerned that the results of all these rules will be a quality and content of disclosure that even sophisticated analysts and investors will find hard to understand. The calculation of “expected losses” and “expected residual returns” is highly complex and, in many cases, may not even be operational. The simplistic example provided in Appendix A does not adequately address real-life examples in which a VIE faces numerous risks simultaneously.

Financial Components Approach—The Appropriate Solution

All of the foregoing issues and problems confirm our original belief (and related recommendations) that the Board should confirm and extend, as necessary, a financial components approach to securitization transactions. This would resolve critically important derecognition and consolidation issues. We continue to believe that such an approach is particularly appropriate in evaluating transfers of financial assets and the variable interest entities created to hold these assets and disperse the risks among the parties who hold them.

As evidenced by the explosive growth in the securitization markets in the United States and abroad, financial assets are uniquely suited to the application of risk-dispersing structuring methods, since there are fewer variables affecting the ultimate cash proceeds realized, and those variables are generally susceptible to actuarial and financial analysis. The explosive growth of the securitization markets in the United

States and abroad demonstrates the validity of these observations. We believe that the Board should provide distinct consolidation guidance for bankruptcy-remote special-purpose entities holding primarily financial assets. In the typical circumstance where no single party controls such an entity's assets or is uniquely responsible for its liabilities, we believe that each party should account for its respective rights and obligations relating to those assets and liabilities. In this circumstance, it is inappropriate and misleading to require any single party to consolidate the entirety of the entity's assets and liabilities.

A Linked Presentation Approach Deserves Serious Consideration

As an alternative to the components paradigm outlined above, several commentators have suggested some form of the linked presentation in their responses to the exposure draft of FIN 46 and the exposure draft of amendments to FAS 140 (and most recently, at the FAS 140 amendments public roundtable). However, on each occasion the Board has dismissed the suggestion without undertaking any meaningful substantive discussion. We think the topic deserves serious consideration, and that there is no time like the present.

We believe that in certain circumstances, the linked presentation approach is a simpler and better alternative to the current, complex all-or-nothing consolidation accounting model. As noted above, we believe it is just as misleading to consolidate the whole as it is to consolidate nothing, when one party obtains or retains and/or is exposed to obligations with respect to certain portions, only, of the cash flows of an asset or pool of assets. In fact, we have seen reports of equity analysts in which they state that they intend to use the FIN 46 disclosures to unwind the accounting for consolidated transactions like CDOs from the primary financial statements.

Provided that the assets in question are financial in nature and are isolated in a bankruptcy-remote special purpose vehicle, we believe that the linked presentation offers a preferable alternative to consolidating the assets or recognizing liabilities for proceeds of a transfer of financial assets on a non-recourse basis if the financial components approach is not applied.

Finally, and importantly, we believe that the linked presentation provides a basis for a broader and more global convergence of accounting standards governing financial asset recognition, derecognition and consolidation. We are aware that issues and problems similar to those outlined above are being addressed by the International Accounting Standards Board, presenting many of the same conceptual and practical challenges. We believe that there is substantial financial market receptivity to a linked presentation approach both inside and outside of the United States, and that such an approach thus offers a basis upon which a meaningful, long-term consensus and convergence of accounting standards may be achieved.

Whatever the Board decides, we appreciate the continued openness and well-intentioned efforts of the Board and its staff to craft a solution to what has been to date a seemingly intractable problem. We would be happy to discuss our comments with the Board and staff. Please contact George Miller of The Bond Market Association on 646-637-9216 or Dwight Jenkins of the American Securitization Forum on 646-637-9233 if you have any questions. Thank you.

Sincerely,

/s/ George Miller

George Miller
Senior Vice President, Deputy General Counsel
The Bond Market Association

/s/ Dwight Jenkins

Dwight Jenkins
Executive Director
American Securitization Forum