

July 31, 2003

Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
Post Office Box 5116  
Norwalk, Connecticut 06856-5116

Letter of Comment No: 35  
File Reference: 1200-001  
Date Received: 07/31/03

**Re: File Reference No. 1200-001**

Dear Director:

We are writing in response to your invitation to comment on the Exposure Draft issued June 10, 2003 relating to Qualifying Special-Purpose Entities and Isolation of Transferred Assets ("Exposure Draft").

KeyCorp ("Key"), headquartered in Cleveland, Ohio, is a bank-based financial services company that, at June 30, 2003, had assets of approximately \$86 billion. Financial institutions like Key commonly use qualifying special purpose entities (QSPE) as a vehicle to relinquish control of transferred assets so that such transfers are legally separated from Key. This transfer of control of assets to a QSPE by way of a true sale of receivables is essential to a securitization. As a result, Key is very interested in any proposed accounting guidance that may redefine or impact the activities of a QSPE. Key is particularly interested in more fully understanding the specific scenarios that could jeopardize the qualifying status of a QSPE.

We appreciate the opportunity to comment on the Exposure Draft and support the Board's two stated objectives to prevent transferors from retaining effective control of transferred assets, and to help ensure that the scope exception to FIN 46 for QSPEs is not used simply to enhance or protect the value of a party's own subordinated interest.

Key routinely sells certain types of loans (primarily education loans) in term securitizations. In fact, approximately ten years ago in July 1993, Key's (then Society Corporation) issuance of a student loan trust was the first public asset-backed issuance of student loans in the industry. Since July 1993, Key has issued over \$6.5 billion in student loan transactions in the marketplace through term securitizations. Use of these term securitizations has fulfilled investor demand for highly rated investments, reduced Key's cost of funds and concentration of student loans, increased liquidity, and provided greater and more diversified access to capital markets.

It is our belief that the broad objectives of this Exposure Draft compliment Key's desire to continue providing carefully structured securitizations that benefit the investors in the resulting securities as well as Key's shareholders and customers. However, Key considers the existing guidance in SFAS 140 sufficient to ensure that the transferor surrenders effective control and that assets are legally separated from the transferor. In addition,

although some parties may have considered the use of a QSPE to obtain a scope exception under FIN 46, ultimately it has not been Key's experience that any significant number of market participants utilized QSPE structures for this purpose.

In reviewing the Exposure Draft, we attempted to determine how this proposed accounting guidance might impact Key's future securitizations. Although we understand and support the FASB's objective to issue more principle-based accounting standards, our review identified several areas in this proposed guidance where clarification may be helpful since there was no clear consensus among our various team members regarding FASB's intent with respect to the following issues.

- What constitutes the issuance of new beneficial interests or the ability to reissue beneficial interests in an existing securitization? Clarification regarding the FASB's meaning of "issuance of new beneficial interests" and "reissue of beneficial interests" would be helpful.
- Paragraph 13 of the Exposure Draft refers to the QSPE receiving "assets other than those it was committed to receive (through commitments to beneficial interest holders unrelated to the transferor)". This concept in the Exposure Draft is considered by us to be particularly problematic since there are various mechanisms in a securitization transaction such as prefunding that are used to protect beneficial interest holders against the loss of pool assets due to consolidation or prepayments. Prefunding also allows an issuer to minimize cost of funds and maximize efficiency through a larger transaction size. In addition, it is unclear as to the level of specification that is necessary in the governing documents regarding assets that the QSPE is committed to receive. Further commentary regarding this concept is needed for clarity.
- This Exposure Draft essentially requires constituents to evaluate whether QSPes qualify as QSPes whenever any arrangement requires delivery of cash or assets to or from a transferor. To not subject the FASB's proposed guidance to a wide array of interpretation or conjecture, it would be helpful to constituents if the FASB would elaborate on the circumstances under which a QSPE could become disqualified.

Sufficient commentary and explanation regarding the concepts and guidance the FASB is attempting to prescribe is helpful in eliminating uncertainty. Uncertainty will undoubtedly lead to a wider range of securitization structure implementation questions and interpretations. Reducing uncertainty in turn would undoubtedly reduce structuring costs and enhance the efficiency and value of securitizations for the benefit of both transferors and investors. It is imperative that this Exposure Draft sufficiently delineate principal concepts with examples that assist companies in appropriately interpreting and applying these concepts in practical situations.

As with other financial service institutions, Key's business is providing financial support and services to customers. This support is provided through various means, such as service agreements, asset management and advisory agreements, leases, loans, standby letters of credit, loan/liquidity commitments, derivative contracts, equity investments, mortgage-backed securities and subordinated debt investments. All of these are common products in the highly competitive and regulated financial services industry.

Given the nature of our business, it is difficult to understand how the FASB's proposed curtailment of liquidity commitments, plain vanilla derivative contracts, and other arrangements between a QSPE, transferor, its affiliates, or its agents serves or protects the beneficial interest holders these financial instruments are meant to benefit. We understand the FASB's rationale for the prohibition of derivative instruments such as, total return swaps; however, we do not believe that plain vanilla derivative instruments such as interest rate swaps should be prohibited. These tools provide low cost enhancements in securitization transactions and provide protection to the beneficial interest holders against market, interest and other risks. We believe they are not undertaken with the intent to convert a true sale of assets into a non-transparent retention of control over those assets. We fear this proposed guidance will contribute to unwarranted inefficiencies in capital market activities related to securitizations.

To avoid this result, we request that the FASB further elaborate on the points above and reconsider the curtailment of financial commitments extended by the transferor, its affiliates, or its agents. After all, the sole purpose of providing such arms-length financial support is to augment the efficiencies of asset-based securitizations.

We appreciate the opportunity to comment on the Exposure Draft and hope that the Board will seriously consider our input. Key advocates changes in accounting standards and disclosure requirements that will improve financial reporting and supports the FASB in its project to provide additional QSPE guidance. However, Key also believes that new guidance should provide readers with sufficient information for interpreting how the principal concepts should be applied in practice to ensure consistency among financial statement preparers and others involved in this process.

We welcome the opportunity to discuss these issues with you in more detail. Please feel free to contact Chuck Maimbourg, Director of Accounting Policy & Research at 216-689-4082 or me at 216-689-3564.

Sincerely,

Lee G. Irving  
Executive Vice President  
& Chief Accounting Officer