

Letter of Comment No: 24
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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
By email to: director@fasb.org

Re: **File Reference No. 1200-001**
Exposure Draft on Qualifying Special-Purpose Entities and Isolation
of Transferred Assets, an amendment of FASB Statement No. 140

Ladies and Gentlemen:

The signing firms appreciate the opportunity to comment on the Financial Accounting Standards Board's (the "FASB" or "Board") Exposure Draft, *Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an amendment of FASB Statement No. 140* (the "Exposure Draft" or "ED"), specifically as it relates to the municipal bond securitization market. Each signing firm¹ is a large financial institution with significant involvement in the securitization markets in general and municipal bond securitizations in particular.

In general, we believe the ED is overly broad. In addition, we believe the ED is non-operational and conceptually inconsistent as it significantly strays from the FAS 140 control based financial components model. That model is an effective model for the vast number of securitization transactions in which transferors of financial assets disperse risk through QSPEs and all parties to such QSPEs recognize only the risks they assume. Our comments are aimed at highlighting areas in which we believe the ED to be overly broad with perhaps unintended consequences to the municipal bond securitization market. There are approximately \$25 billion per year in municipal bond securitizations. This market is closely linked to the municipal bond issuance market and greatly enhances a municipality's ability to raise affordable funding by providing liquidity to the market.

¹ The views expressed in this letter are based upon input received from the municipal finance professionals and accounting policy professionals of each of the referenced firms.

Limits on Support Commitments Provided by Transferors

The Exposure Draft would prevent an entity from being a QSPE if it enters into any agreement that obligates a transferor, its affiliates or agents ("transferor") to deliver additional cash or other assets to fulfill the SPE's obligations to beneficial interest holders. Such agreements would include liquidity commitments, financial guarantees or other commitments to deliver cash or other assets to the SPE. We believe this prohibition on support commitments to be overly broad and inconsistent with the FAS 140 financial components model.

For example, the ED specifically cites liquidity commitments as being a proposed prohibited support transaction by transferors to QSPEs. We do not believe that "pure" liquidity agreements, which are not available to fund or purchase defaulted assets, should be prohibited support transactions by transferors to QSPEs. In municipal bond securitizations, transferors often provide a liquidity facility; however, such facility is often not available if the credit quality of the underlying bond portfolio deteriorates and/or defaults (i.e., it provides pure liquidity). Rather than prohibiting liquidity commitments as a support arrangement, we believe the FASB should rely on the legal isolation criteria to prohibit support arrangements that provide substantive recourse. We believe support commitments by transferors that combine both liquidity and credit will generally fail the legal isolation requirement and derecognition will not be permitted. In contrast, a pure liquidity commitment generally will meet the legal isolation requirement for derecognition, and therefore we do not see any justification for prohibiting these commitments to be entered into with QSPEs.

Ability to Re-issue Beneficial Interests

We request that the FASB confirm that a remarketing would not be deemed a re-issuance. For instance, in municipal bond securitization programs, certificates representing a beneficial interest in municipal bonds are periodically remarketed by a designated remarketing agent. The remarketing agent resets the interest rate on the certificates at a market-clearing rate at the time of each remarketing. We do not believe that this constitutes a re-issuance because the same securities (as defined by the CUSIP number) remain outstanding with the same stated maturity. It is important to note that these securities are not deemed to be a new issuance for tax or securities law purposes.

Furthermore, in municipal bond securitizations, residual holders often have the ability to change the interest rate modality of the beneficial interests issued; however this ability is limited to interest rate periods not to exceed 397 days. We believe that such limited ability to set interest rate modalities for periods under 397 days is consistent with the FAS 140 framework as it does not involve discretion that can be expected to influence the residual returns to the transferor in any material way. Further, we believe this view to be consistent with the FAS 140 provision in paragraph 35.c.(6), which allows for the limited ability to invest excess cash held by QSPEs provided such investments are generally in money market or equivalent assets. For the beneficial interests to be

considered a money market security under Rule 2a-7 of the Investment Company Act, such beneficial interests must have maturities of 397 days or less. Therefore, we request that any new provisions relating to QSPEs that re-issue beneficial interests should only apply when the range of permitted interest rate modalities creates a possibility of materially influencing the residual cash flows. We request that a transaction which restricts this ability to periods not to exceed 397 days be included as an example of a range that would not ordinarily create that possibility.

Conclusion

Municipal bond securitizations that use QSPEs play a vital role in the global capital markets. We believe the ED over-reaches the FASBs intended goals in issuing the ED. In addition, we believe the ED fails to provide a governing principle because it combines elements of both a control based and a risks and rewards model. As a result, we believe this model in many respects is non-operational. We urge the FASB to consider the highlighted issues discussed above related to over-reaching impacts to the municipal bond securitization markets.

We appreciate the opportunity to provide you with our comments and look forward to discussing these comments with you further.

Sincerely,

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