The Real Estate Roundtable

Letter of Comment No: 6
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July 30, 2003

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

Ladies and Gentlemen:

The Real Estate Roundtable (*www.rer.org*) is providing commentary to the Financial Accounting Standards Board on its Exposure Draft on *Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an amendment to FASB Statement No. 140* (Exposure Draft).

If adopted, the Exposure Draft could have the unintended consequence of diminishing the liquidity of an otherwise robust $360 billion U.S. commercial mortgage-backed securities (CMBS) market — the second largest source of commercial and multifamily real estate credit in the United States. Such a dislocation could impede the flow of credit to the commercial real estate sector and, thereby, affect its overall liquidity and valuation. As such, we appreciate the opportunity to provide the Board, as well as the U.S. banking regulatory agencies, with our concerns about the Exposure Draft.

The Real Estate Roundtable and its members lead an industry that generates more than 20 percent of America's gross national product, employs more than 9 million people and produces nearly two-thirds of the taxes raised by local governments for essential public services. Our members are senior real estate industry executives from the nation's leading income-producing real property owners, managers and investors, the elected heads of America's leading real estate trade organizations, as well as the key executives of the major financial services companies involved in financing, securitizing or investing in income-producing properties. Our comments on the Exposure Draft are directed at the impact the Exposure Draft's proposed changes could have on overall real estate liquidity.

There are serious industry consequences that could result if a qualifying special-purpose entity (SPE), of the type that has been consistently used in CMBS transactions throughout the period of compliance with SFAS 125 and later under SFAS 140, were to fail to be considered a qualifying SPE under the Exposure Draft. Many experts fear that most current qualifying SPE structures would not be qualified under the proposed new standards. By disqualifying virtually all securitization special purpose entity (SPE) structures from being qualifying SPEs, the Exposure Draft could alter the accounting for an enormous number of transactions.

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The Real Estate Roundtable believes that the structure of most CMBS transactions are entirely consistent with the FASB's intentions when the qualifying SPE concept was created in SFAS 125 and carried forward into SFAS 140. CMBS originators generally account for the transfer of loans to the trust as a sale. They "de-recognize" the assets sold and recognize all assets obtained and liabilities incurred as proceeds of the sale, measuring them initially at fair value. In doing so, they recognize in earnings any gain or loss on the sale. The ability to account for such transfers as sales is clearly a decisive consideration for every issuer of CMBS, and the inability to achieve sale accounting would severely distort the economics of securitizing CMBS.

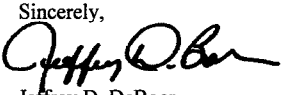
Clearly, the ability to continue to achieve SFAS 140 sales treatment is critical to maintain a functional and vigorous of CMBS market. By placing inordinately excessive restrictions on qualifying SPEs, the Exposure Draft's proposed changes could have the effect of dislocating the CMBS market, thereby slowing the secondary mortgage market and restricting credit availability for real estate. Memories of the credit crunch problems of the prior decade are still vivid in the real estate industry, and such catastrophic swings in capital flows to this sector would materially impact real estate collateral valuations, credit availability and the balance sheets of a number of major financial services and investment companies. In short, as currently proposed, this measure could have a chilling effect on the real estate capital markets and the entire commercial real estate industry.

Given the potentially catastrophic impact that the Exposure Draft could have on the CMBS market, we do not support its adoption. In the current economic environment, an illiquid CMBS market could exacerbate not only the problem for real estate, but also delay a more robust national economic recovery. The Real Estate Roundtable urges the Board to reconsider whether the potential accounting benefits that might be gained from these proposed changes outweigh their enormous economic costs.

We also recommend that the Board engage a comprehensive economic study that might allow for the clarification of ambiguities surrounding the Exposure Draft's implementation and application to the CMBS market. We believe these additional considerations to be particularly important in light of the current national economic environment.

We hope that the Board finds our comments useful as it rethinks implementation of the Exposure Draft. The Real Estate Roundtable would be happy to discuss our comments with the Board and appreciate the opportunity to comment on this important matter.

Sincerely,



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