



KPMG LLP
757 Third Avenue
New York, NY 10017



LETTER OF COMMENT NO. 8

September 14, 2007

Russell G. Golden
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

RE: Proposed FASB Staff Position No. FAS 140-d, "Accounting for Transfers of Financial Assets and Repurchase Financing Transactions"

Dear Mr. Golden:

We appreciate the opportunity to comment on proposed FASB Staff Position No. FAS 140-d, "Accounting for Transfers of Financial Assets and Repurchase Financing Transactions" (the "proposed FSP"). We agree that additional guidance is needed regarding repurchase agreements involving previously transferred financial assets. However, we believe that some of the provisions of the proposed FSP may result in unintended consequences and others should be clarified.

Scope

Paragraph 4 of the proposed FSP states that "[t]he lapse of time between the initial transfer and the repurchase agreement is not relevant when determining if the transaction is a repurchase financing within the scope of this FSP." We believe this provision may have unintended consequences. For example, assume that a financial asset is initially transferred and that same security is transferred back to the initial transferor under a repurchase agreement after a significant time period has lapsed (for example, one year). Further assume that the second transfer meets all criteria from paragraph 7 of the proposed FSP except that it does not provide the initial transferor (the transferee under the repurchase agreement) with full recourse to the initial transferee (the transferor under the repurchase agreement) in the event of default. Under the proposed FSP, the initial transfer of the financial asset and the repurchase financing would be considered linked despite there being no contractual or implied commitment to enter into the repurchase financing. As a result, we recommend that the criteria in paragraphs 7(b) – 7(e) should apply only to repurchase financings that are entered into at or near the same time as the initial transfer.

We believe that the guidance provided in Statement 140 regarding "wash sales" is relevant to the issue of proximity of the repurchase financing to the initial transfer of



Russell G. Golden
Financial Accounting Standards Board
September 14, 2007
Page 2

financial assets. According to paragraph 99 of Statement 140, “Unless there is a concurrent contract to repurchase or redeem the transferred financial assets from the transferee, the transferor does not maintain effective control over the transferred assets.” Paragraph 217 of Statement 140 further states that “expectations of reacquiring the same securities without any contractual commitments, as in ‘wash sales,’ provide no control over the transferred securities.” We believe that paragraph 7(a) of the proposed FSP is consistent with this guidance but that the additional criteria in paragraph 7 may result in inconsistency with that concept for repurchase financings that are not contemporaneous with the initial transfer.

If the Board chooses to retain the criteria in paragraph in paragraphs 7(b) – 7(e) for repurchase financings that are not entered into at or near the same time as the initial transfer, we believe that additional guidance should be provided on the appropriate accounting for transactions that are considered to be linked subsequent to the issuance of the financial statements that include the initial transfer (which was recorded as a separate transaction because it did not contemplate the repurchase financing).

Criteria for Separate Accounting

Paragraphs 7(b) and 7(d) appear to be inconsistent. Under paragraph 7(b), the initial transferor would be permitted to transfer “substantially the same” asset (rather than the specific previously transferred asset) to the initial transferee upon maturity of the repurchase agreement. Paragraph 7(d), however, requires that the initial transferee maintain the rights to the collateral (i.e., the initial transferee must be able to take control of the transferred financial asset and substitute a different financial asset for it as collateral). Under paragraph 7(d), the initial transferor is permitted to sell or repledge the collateral if the asset is readily obtainable. If the initial transferor has sold or repledged the collateral, the initial transferee would not be able to take control of the transferred financial asset and substitute a different financial asset for it as collateral. We recommend that the Board clarify the operation of paragraphs 7(b) and 7(d) for readily obtainable financial assets.

We recommend that an additional criterion be added to paragraph 7 regarding voting rights of the transferred financial asset during the term of the repurchase financing. The transferee in a repurchase transaction (i.e. the initial transferor of the financial asset) becomes the registered holder of the financial asset and should obtain any related voting rights as a result. If the initial transferor retains the voting rights of the transferred financial asset during the term of the repurchase financing, we believe that would indicate that the initial transferor has not relinquished control of the transferred financial asset.



Russell G. Golden
Financial Accounting Standards Board
September 14, 2007
Page 3

Footnote 6 to paragraph B2(a) indicates that the ability to net settle transactions is a factor to be considered in determining whether the two transactions fail the criteria in paragraph 7. We recommend that the proposed FSP identify the criteria in paragraph 7 that are impacted by this footnote or that the criteria in paragraph 7 be clarified to indicate how the ability to net settle the transactions impacts the analysis.

We also recommend that the proposed FSP provide guidance regarding when the criteria in paragraph 7 should be evaluated. We believe those criteria should be evaluated only upon the inception of the repurchase financing and that it would not be operational for an entity to evaluate the requirements for separate accounting continuously throughout the term of the repurchase financing.

Accounting for Linked Transactions

We believe that additional guidance regarding the accounting for a linked transaction would be helpful because accounting for the combined transactions as a forward contract may not be appropriate in some situations. For example, Statement 140 permits a qualifying special purpose entity to hold only passive derivative financial instruments that pertain to “beneficial interests issued or sold to parties other than the transferor, its affiliates, or its agents.” Accordingly, a transferor that has sold financial assets to an entity that would otherwise qualify as a qualifying special purpose entity will not achieve sale accounting for those financial assets if the qualifying special purpose entity has not transferred to a third party all beneficial interests to which a derivative held by the SPE pertains. Under the proposed FSP, if the conditions in paragraph 7 are not met for the transfer of such a beneficial interest to a third party and contemporaneous repurchase financing of such a security, how would the combined transaction be described for accounting purposes? Would the combined transaction be deemed a forward sale of the beneficial interest at the maturity date of the repurchase agreement? Or would it take into consideration that upon “repurchase” of the beneficial interest by the initial transferee, the result would be the sale of all financial assets, due to that transaction resulting in the issuing entity becoming a QSPE?

Effective Date and Transition

Due to credit market disruptions, it may be difficult for transferors to terminate outstanding repurchase transactions, which would require those entities to record the previously transferred financial assets and repurchase financings if they did not meet the criteria for separate accounting. In addition, some reporting entities have a very high volume of transactions that will need to be evaluated under the provisions of the proposed FSP. We believe that it may be operationally difficult to implement the proposed FSP within the timeframe provided. If, under the proposed FSP, previously qualifying SPEs are no longer qualifying, consolidation of those entities will require significant effort



Russell G. Golden
Financial Accounting Standards Board
September 14, 2007
Page 4

because many QSPEs historically have not maintained financial statements in accordance with U.S. generally accepted accounting principles. Additionally, we expect that significant effort will be necessary for a reporting entity to determine which transfers and repurchase transactions are subject to the FSP because policies and procedures have not previously been in place to identify and monitor such transactions. As a result, we recommend that the proposed effective date be delayed.

Suggested Wording Changes

7a. The initial transfer and the repurchase financing are not contractually contingent on one another: ~~and~~ ~~There~~ are no implied commitments that are entered into at or near the same time with the same counterparty (or an affiliate or agent of the counterparty) that depend on or affect either of the transactions. For example, if the pricing or performance of either the initial transfer or the repurchase financing depends on terms and execution of the other agreement, an implied commitment likely exists.

7d. The initial transferee (the borrower) maintains rights to the collateral (is able to take control of the transferred financial asset and substitute ~~it with~~ a different financial asset for it). In addition, the initial transferor (the lender) cannot sell or repledge the collateral at any point prior to the settlement of the repurchase financing, unless the asset is readily obtainable.

8. If the transactions meet all of the criteria in paragraph 7, the repurchase financing shall be accounted for separately from the initial transfer, and the transferor and transferee shall analyze both the initial transfer and the repurchase financing as a repurchase agreement under Statement 140.⁵ Statement 140 requires that both parties to a transfer of financial assets (including a repurchase agreement) account for the transfer symmetrically a repurchase agreement in the same manner.

9. If the transactions do not meet all of the criteria in paragraph 7, the initial transfer and repurchase financing should be evaluated as a linked transaction. The linked transaction should then be evaluated to determine if it meets the requirements for sale accounting under Statement 140. If the linked transaction does not meet the requirements for sale accounting, the linked transaction shall be accounted for based on the economics of the combined transactions, which generally represent a forward contract. FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*, should be used to evaluate the accounting for the forward contract.

A3. The FASB staff became aware that in many instances a transferor and transferee separately evaluate an initial transfer and a repurchase financing involving a previously transferred financial asset when applying Statement 140. In doing so, the transferor and



Russell G. Golden
Financial Accounting Standards Board
September 14, 2007
Page 5

transferee first analyze the initial transfer to determine whether it meets the criteria for sale accounting for derecognition, which includes performing the isolation analysis under paragraph 9(a) of Statement 140, without considering the impact of the repurchase financing. The repurchase financing is then separately analyzed as a transfer of a financial asset (as collateral) with an agreement to repurchase the financial asset, under paragraphs 47–49 and 96–101 of Statement 140.

A11. The Board concluded that the guidance provided in this FSP should be applied by both transferors and transferees because Statement 140 requires ~~presumes that~~ the transferor and transferee to account for a transfer of a financial asset symmetrically.

A12. Constituents told the Board that it is common practice for transferors and transferees in certain industries to separately account for transfers and repurchase financings as described in paragraph A2 of this FSP. The Board ~~does not~~ believes that in some circumstances this practice is inconsistent with the intent of Statement 140.

Consequently, the Board decided that it is desirable to make this FSP effective as soon as practicable. The Board decided that the provisions of this FSP should be effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Board decided that early adoption of this FSP would not be permitted.

* * * * *

If you have any questions about our comments or wish to discuss any of the matters addressed herein, please contact Michael Foley at (212) 909-5517 or Kimber Bascom at (212) 909-5664.

Sincerely,

KPMG LLP