



September 14, 2007

LETTER OF COMMENT NO. 4

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

File Reference: Proposed FSP FAS 140-d

Dear Mr. Golden:

HBK Capital Management appreciates the opportunity to comment on proposed FASB Staff Position No. FAS 140-d, "Accounting for Transfers of Financial Assets and Repurchase Financing Transactions." HBK Capital Management is an investment manager with over \$14 billion in equity capital under management, and our funds regularly utilize repurchase transactions to finance investments. While we agree with the general principles described in paragraph 6 of the proposed FSP, we do not support the issuance of the proposed FSP in its current form. The criteria in paragraph 7 represent detailed, unrebuttable presumptions that, if not overcome, require all transactions within the proposed FSP's scope to be "linked." We believe that many repurchase financings that satisfy the general concepts of paragraph 6 to be accounted for separately would not meet all five detailed criteria in paragraph 7 and would, therefore, be considered "linked transactions." We are unclear how certain of the detailed criteria are consistent with the principles in paragraph 6. We also believe that the analysis necessary to comply with the proposed FSP, as drafted, would result in significant additional cost without any incremental benefit to the financial statement user. In fact, we believe that for the "initial transferee" the accounting for "linked transactions" would obscure the initial transferee's use of leverage in its financial statements.

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***1. Are the criteria in paragraph 7 of this proposed FSP operational and do they appropriately identify those transactions that should be accounted for separately? If you disagree, please provide example transactions that do not meet the criteria but should be accounted for separately or that do meet the criteria but should not be accounted for separately. Explain the business purpose (or lack thereof) of the example transactions provided.***

**Paragraph 7(a):**

We believe that the criteria in paragraph 7(a) would create a significant operational burden for preparers. Given the size of our funds' portfolio and our regular use of repurchase agreements as a financing tool, there will often be times when repurchase agreements are entered into with the same counterparty from which the collateral under the repurchase agreement was purchased, near the same time that the asset was purchased. The repurchase agreements will be transacted with a different desk at the counterparty than the desk from which the assets were purchased, and there will not be any implied commitment to use the counterparty for the repurchase agreement. We believe that these types of transactions are independent of one another. However, we are unclear how we reasonably could satisfy our auditors that there are no "implied commitments...that depend on or affect either of the transactions." There are numerous procedures that would have to be performed surrounding each of the transactions to even reasonably support a conclusion that there are no implied commitments (interviews, document reviews, pricing comparisons, etc.). We do not believe that any financial reporting benefits will accrue as a result of this additional work. Where we are the "initial transferee" and do not satisfy all the conditions in paragraph 7, this change would result in a less levered balance sheet without any change to our net asset value as compared to our historical accounting. This change in reporting is at best insignificant to our financial statement users and at worst misleading with respect to our use of leverage to finance our investments.

300 Crescent Court, Suite 700  
Dallas, Texas 75201  
214-758-6100

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Paragraph 7(c)

We do not believe an asset's status in the fair value hierarchy is a suitable determinant for whether a transferor has maintained effective control over the transferred asset. There doesn't appear to be a conceptual basis for concluding that a repurchase financing of an asset in Level 2 of the fair value hierarchy transacted with two counterparties should be accounted for as two separate transactions, while a repurchase financing of the same Level 2 asset with different desks of the same counterparty that otherwise meets the criteria in paragraph 7 would be accounted for as linked.

In paragraph A8, it states "The Board concluded that marketability is important because it provides evidence that the decision to execute the repurchase financing with the same counterparty is not based solely on the uniqueness of the asset." While an asset's marketability may provide *some* evidence that the decision to use the same counterparty is not based solely on the uniqueness of the asset, it should not result in an un rebuttable presumption that the transactions are linked solely because the same counterparty was used for a non-Level 1 asset. Nor do we agree that Level 1 of the fair value hierarchy is an appropriate proxy for an asset's marketability. Level 2 assets are often widely held by various market participants, even though they may not trade as frequently as Level 1 assets or have a conventional market quotation system. We often receive bids from multiple counterparties for Level 2 assets with little variation in the prices offered. Thus, we believe the Board's threshold for "marketability" is unreasonably narrow.

Paragraph 7(d)

We believe that the requirement that the initial transferee maintains rights to the collateral is appropriate and is consistent with the collateral provisions of our funds' repurchase agreements that are within the scope of the proposed FSP. We also note that investment funds often enter into open-dated repurchase agreements or other repurchase agreements that can be unwound on demand. When a repurchase agreement is unwound, the fund often enters into a separate repurchase agreement with another counterparty using the same asset as collateral (often collateral in Level 2 of the hierarchy). We believe that a past practice of subsequently transferring collateral subject to a repurchase financing to a counterparty other than the initial transferor should be an indicator that the transactions are not linked. The ability to substitute collateral subject to a repurchase agreement or unwind the agreement on demand, coupled with a past history of doing so, should be sufficient to establish that the transferee, and not the transferor, has control over the asset.

With respect to the second criteria in paragraph 7(d), we note the contradiction that the threshold for whether the transferor can sell or pledge the asset without concluding that the initial transferor has maintained control is whether the asset is "readily obtainable", in contrast to the condition in paragraph 7(c) that the asset reside within Level 1 of the fair value hierarchy. We believe the requirement that the asset must be readily obtainable is more reasonable and accomplishes the same purpose; namely, it provides evidence that the asset is not so unique that the two transactions could *only* have been done with the same counterparty.

***2. What costs would be incurred to implement the proposed FSP?***

***3. What procedures, controls, and systems are required to implement this proposed FSP? Can such procedures, controls, and systems be in place by the proposed effective date—the beginning of the first fiscal year after November 15, 2007? If not, when can the procedures, controls, and systems be in place to implement this proposed FSP?***

These are related questions. To adequately implement the FSP, as proposed, we would need to modify our systems to develop a mechanism that would identify circumstances where we have purchased an asset and subsequently posted that asset as collateral under a repurchase agreement with the same counterparty. There would be other systems enhancements necessary to compare the pricing of the relevant transactions to "market rates", to determine the asset's proper level in the fair value hierarchy, to value the two distinct transactions as one forward contract, and to undo our booking of the two transactions and present them as one forward contract. We would need to implement procedures for 1) reviewing the confirmations and master repurchase agreements for each counterparty in light of the guidance in paragraph 7, 2) reviewing related documentation surrounding the two transactions to determine the

presence of any "implied commitments", and design and implement the related financial reporting controls that need to be created in conjunction with any change in accounting standards. The types of costs related to these changes are self-evident: primarily costs for programmers to change systems, and the commitment of scarce internal resources to develop the new processes and procedures and to continuously monitor these transactions on a go-forward basis. Depending on how onerous and costly the changes would be to comply with this proposed FSP, we also may need to re-evaluate whether we would limit ourselves to only entering into repurchase agreements with counterparties other than those that we purchased the related collateral from.

#### ***4. Are there other implementation issues the Board should consider?***

We note that the EITF and DIG addressed similar issues in EITF 02-2 and DIG Issue K1, respectively. Although the EITF never reached a consensus on EITF 02-2 (due to difficulties in drafting rules that could adequately identify abusive transaction structuring without impacting legitimate transactions), we note that a central tenet of both Issues' deliberations and of the response to Issue K1 was to prevent entities from structuring financial instruments with the direct or indirect purpose of circumventing accounting rules to avoid undesirable accounting outcomes. We believe that the proposed FSP may have the inadvertent effect of causing "initial transferees" to structure transactions that would be considered "linked" because the accounting prescribed in paragraph 9 of the proposed FSP may be viewed by some entities as desirable.

Many investment funds often are "initial transferees" in the transactions described in the FSP, and they use repurchase agreements to finance the purchases of various types of assets. They currently record the initial purchase and repurchase agreements separately, which results in the recognition of the purchased asset and a liability for the obligation under the repurchase agreement. Because these funds are often investment companies under the AICPA Investment Company Accounting and Auditing Guide, they report the asset at fair value and the repurchase agreement liability at cost plus accrued interest. The income statement reflects both the changes in fair value of the asset and the interest expense from the repurchase agreement.

If the transactions were considered "linked" and reported as a forward contract, it would have the impact of reducing a fund's reported leverage, without any significant change to its income statement (we believe the net income impact of reporting as a forward contract at fair value is approximately the same as reporting the asset at fair value and the repurchase agreement at cost plus accrued interest, given the short term nature and repricing provisions of many repurchase agreements). We believe that this would result in misleading financial reporting to financial statement users. Because we view the repurchase agreement as an independent financing decision apart from the asset purchase, we believe the requirement to link the two transactions would improperly ignore that a fund financed an unconditional asset purchase. This concern also is relevant for any non-investment company that accounts for its financial instruments at fair value.

Also, the rules for offsetting certain assets and liabilities under US GAAP are restrictive; in particular, FIN 41 provides several detailed criteria that need to be met to offset repurchase and reverse repurchase agreements with the same counterparty that mature on the same day. Although only one leg of the transactions addressed in the proposed FSP involves a repurchase agreement, the outcome for failing the criteria in paragraph 7 is similar. While the proposed FSP appears to be designed to prevent initial transferors from de-recognizing assets in "linked" transactions, a potential consequence may be that "initial transferees" deliberately structure transactions that do not meet the criteria in paragraph 7 in order to net the purchased asset and repurchase liability as a forward contract. This appears to lower the threshold for netting certain transactions with the same counterparty.

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If you have questions on the above comments or wish to further discuss any of the matters addressed herein, please contact me at 214-758-6316.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Nesta". The signature is written in a cursive style with a large, stylized initial "M".

Michael Nesta  
Accounting Policy  
HBK Capital Management