

14 September 2007

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Financial Accounting Standards Board  
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LETTER OF COMMENT NO. **5**

**File Reference: Proposed FSP FAS 140-d, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions***

Dear Mr. Golden:

Credit Suisse Group (“CSG”) appreciates the opportunity to express our view on the Financial Accounting Standard Board’s (“FASB”) proposed Staff Position No. FAS 140-d, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions* (the “FSP”). CSG is registered as a foreign private issuer with the Securities and Exchange Commission and its consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States (“US GAAP”).

We appreciate the efforts that the staff and the Board have made to improve financial reporting under the model of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (“FAS 140”). However, in general, we do not support the issuance of the FSP based on the proposed criteria set forth in paragraph 7 of the FSP from a conceptual standpoint as well as due to the detailed criteria of the proposal. Conceptually, we disagree with the proposal because it increases accounting complexity at a time when there is a public desire to reduce such complexity. The adoption of this FSP will also create divergences from IFRS for these types of transactions. Furthermore, we would challenge the need for such new prescriptive guidance when there appears to be little diversity in current practice as highlighted by the FASB Staff in paragraph A3 of the FSP “...in many instances a transferor and transferee separately evaluate an initial transfer and repurchase financing....”

Specifically, we do not support the proposal that the **legal isolation analysis** for the initial transfer of the financial asset under paragraph 9a of FAS 140 be interrelated with the **accounting analysis** under paragraphs 47-49 of FAS 140 for repurchase financing. Paragraphs 47-49 of FAS 140 set forth the conditions for repurchase financing transactions, which state that true sale is not achieved for accounting

purposes even though the title of the financial asset has been transferred to the party who provides financing. The fact that the initially transferred asset is pledged as collateral for the repurchase financing should not invalidate the original sale of the transferred asset as long as the initial transferee agrees to repurchase the assets at a fixed price and the initial transferor has full recourse to the initial transferee.

If the Board believes it is necessary to develop more conditions on how to provide evidence that the transactions (the sale of the transferred asset and the repurchase financing) are separate ones, we believe the most important criteria to determine if the initial transfer of a financial asset and repurchase financing are linked should be: 1) the transactions have a valid and distinct business or economic purpose for being entered into separately, and 2) the repurchase financing provides the initial transferor *with full recourse to the initial transferee upon default, and the initial transferee's agreement to repurchase the previously transferred financial asset is for a fixed price and not at fair value.* Through the recourse term, the initial transferor transfers the market risk to the initial transferee and takes on the credit risk of the initial transferee through the financing arrangement. In our view, this is a strong indication that the two transactions are separate ones. That is, from a risk perspective, there is effectively a change in economic substance upon the execution of each transaction.

These two criteria are also in line with the existing models in US GAAP to determine whether to link two transactions. For example, DIG Issue K-1, *Miscellaneous: Determining whether Separate Transactions Should Be Viewed as a Unit* ("K-1"), provides guidance for when to link two or more separate transactions. The only difference is that K-1 requires that the two transactions relate to the same risk to be considered linked, while sale with repurchase financing has two different risks: market risk and credit risk, which we believe are indicators that the transactions should not be linked when full recourse exists.

We understand that the Board has a valid concern about other factors in developing other criteria set forth in paragraph 7, as further described below. We do not believe these additional conditions are necessary. However, if the Board believes these are important considerations, these should be indicators, or factors to consider in the analysis. To elaborate further on these general comments, we respectfully ask the Board to consider the following specific comments.

### **Scope of the FSP**

The scope of the proposed FSP is not clear. It appears that the FSP's intention is to address the sale with repurchase financing with the concern of whether paragraph 9 of FAS 140 is met. However, footnote 2 in the FSP suggests that it could apply to any form of collateralized financing. We suggest that the scope of the FSP be clarified and limited to repurchase and reverse repurchase agreements as described in paragraphs 47-49 and 97 of FAS 140, and as defined in footnote 1 of FIN 41, *Offsetting of Accounts Related to Certain Repurchase and Reverse Repurchase Agreements*. Even

though we are not bankruptcy law attorneys, the following is our understanding of the legal framework for repurchase financing and other secured financing. In a repurchase financing transaction, the initial transferee ("Repo Seller") transfers legal title to the purchased asset back to the initial transferor ("Repo Buyer"). In the event of the initial transferee/Repo Seller's bankruptcy, the initial transferor/ Repo Buyer would be able to liquidate the collateral subject to the repurchase financing outside of the bankruptcy proceedings. However, for other types of secured financing, the legal title to the asset pledged as collateral is not transferred, and the initial transferor/lender would be required to file a claim as secured creditor with the bankruptcy court in the event of the initial transferee/debtor's bankruptcy. Therefore, given that the legal isolation analysis would significantly differ from the legal isolation analysis with respect to repurchase financing transactions, other types of secured financing should be treated differently for FAS 140 purposes and we believe should not be included within the scope of the FSP.

### **Linkage Criteria**

If the Board decides to issue the FSP as proposed, we have serious concerns about the implied commitment and marketability criteria as currently proposed in paragraphs 7a and 7c.

Per paragraphs 7a and A6, implied commitments must be considered in determining if the two transactions are linked. We suggest that the implied commitment consideration be deleted from the criteria on the basis that the initial transferor has relinquished the market risk and taken on the credit risk of the initial transferee as discussed above. Additionally, the concept of implied commitment is difficult to interpret and not practical to apply.

Per paragraph 7c, in order to delink the two transactions, the financial asset subject to the FSP should have a quoted price in an active market (*Level 1 as defined in FAS 157, Fair Value Measurements*). This would mean that many regular repurchase financing arrangements with valid and distinct business or economic purpose will be subject to the FSP even though all other criteria set forth in paragraph 7 of the FSP are met. We strongly recommend that this criterion be revised to state that the financial assets should be "readily obtainable" in the marketplace. The concept of "readily obtainable" is introduced in paragraph 32 of FAS 140 and we would propose that the FSP align more closely with FAS 140. If the asset is "readily obtainable" in the marketplace, it is a clear indication that the initial transferor does not place reliance on the transferred financial assets, indicating that the two transactions are not linked. If the Board would like to use the levelling model introduced by FAS157 to define active market, we strongly suggest that, paragraph 7c be expanded, at a minimum, to Level 2 instruments.

### **Operationality**

The FSP requires the evaluation of the linkage of the two transactions irrespective of whether they occur simultaneously or at later date. We currently do not have the system capability to track the financial assets sold to a counterparty and pledged back to CSG at a later date as described in the proposed model, especially when the two trades are transacted separately by two different desks in two different regions. The execution of two transactions at separate dates is, in our view, a strong indicator of two separate transactions. As such, we suggest that the FSP provide feasible guidance describing a reasonable passage of time to make the FSP operational.

**System Readiness**

If the Board decides to issue the FSP as proposed, it will require us to design system controls to identify all financial assets that have been transferred and then are pledged back to us under a repurchase financing arrangement with the same counterparty. Currently, we do not have such system capability and the FSP will require extensive system modifications, which would not be ready by November 15, 2007, the proposed effective date. In fact, even deferring the effective date to January 1, 2009 will pose system challenges to us.

**Effective Date and Transition**

If the Board decides to issue the FSP as proposed, we would recommend that the FSP only apply to new transactions prospectively. The majority of the repurchase financing transactions are short term in nature and we expect that only a small population of the existing transactions within the scope of the FSP will still be outstanding as of the effective date. However, the effort of identifying the existing deals will be significant as compared to the benefit to financial statement users. We do not believe that prospective application will distort the financial statement presentation and comparison.

In summary, we do not support the issuance of the FSP as it will create tremendous operational and system challenges while providing little incremental value to the users of the financial statements. This is especially true after the adoption of FASB Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("FAS 159"). After the adoption of FAS 159, we expect the FSP will have little or no impact on the income statement and will require balance sheet gross-ups to the extent of cash received (or haircut). Additionally, if the market risk has been transferred to the initial transferee, recording the original transferred asset on the initial transferor's book for accounting purposes is not a true reflection of the economic substance of the transactions (i.e., the sale of the financial asset and the repurchase financing), and therefore distorting the financial statements.

Finally, we would like to propose incorporating the FSP into the overall FAS 140 amendment project.



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*If you have any questions or would like any additional information on the comments we have provided, please do not hesitate to contact Eric Smith in New York on (212) 538-5984, John Hu on (212) 538-7156 or Todd Runyan in Zurich on +41 44 334 8063.*

Sincerely,

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