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October 15, 2008



LETTER OF COMMENT NO. 13

Technical Director Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, Connecticut 06856-5116

RE: Proposed FASB Staff Position FAS 140-e and FIN 46(R)-e, "Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities" (File Reference: Proposed FSP FAS 140-e and FIN 46(R)-e)

Dear Technical Director:

We appreciate the opportunity to respond to the proposed FASB Staff Position FAS 140-e and FIN 46(R)-e, "Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities" (the "proposed FSP"). We agree with the Board's stated objectives of providing greater transparency to financial statement users about a transferor's continuing involvement with transferred financial assets and an enterprise's involvement with variable interest entities ("VIEs"). We believe that the proposed FSP will help with achieving these stated objectives prior to the effective date of the proposed Statements to amend FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("Statement 140"), and FASB Interpretation No. 46(R), Consolidation of Variable Interest Entities ("FIN 46(R)").

While we support the issuance of the proposed FSP, we have significant concerns related to the separate disclosures in Appendix D required for nontransferor enterprises that hold a significant variable interest in a qualifying special-purpose entity ("QSPE"). Additionally, we believe that the Board should clarify its intent with respect to certain aspects of the proposed FSP. Our general observations and specific comments on the proposed FSP are set forth below.

Disclosure Requirements for a Nontransferor Enterprise that Holds a Significant Variable Interest in a QSPE

Our primary concern regarding the proposed FSP relates to the differentiation between the required disclosures for nontransferor enterprises that hold a significant variable interest in a QSPE and the required disclosures for other enterprises that hold a significant variable interest in a VIE. We do not believe that there should be differences between the



disclosure requirements for enterprises that hold significant variable interests in VIEs and QSPEs. We believe that if a nontransferor enterprise with a significant variable interest in a QSPE provided the disclosures required in paragraph 22C(d) of FIN 46(R), as added by the proposed FSP, the Board's stated objective of providing greater transparency to financial statement users about an enterprise's involvement with VIEs would be met. Therefore, we suggest that the Board eliminate Appendix D from the proposed FSP and include language to clarify that the scope exceptions currently included in paragraphs 4(c) and 4(d) FIN 46(R) do not relieve enterprises with variable interests in QSPEs from the disclosure requirements of the proposed FSP.

If the Board believes that there are inherent differences between the disclosures that should be required for an enterprise that holds a significant variable interest in a OSPE and those that should be required for an enterprise that holds a significant variable interest in a VIE that is not a OSPE, we believe that the Board should clearly indicate what those differences are and why the Board believes that the benefit of providing the different disclosures outweighs the cost of identifying which VIEs are OSPEs. We believe that the provisions of Appendix D will require all beneficial interest holders (including those that are not transferors) to definitively conclude as to whether the entity issuing the beneficial interests meets the criteria in Statement 140 to be a OSPE. This analysis is rarely done in practice today since many beneficial interest holders may qualitatively conclude that they could not be the primary beneficiary and, therefore, do not evaluate their eligibility for the OSPE scope exception. More importantly, nontransferor enterprises often may not have access to certain information (such as the percentage of beneficial interests held by the transferor) that is required to definitively conclude whether the entity is a OSPE. Even in situations where all information is accessible, we believe that enterprises will incur significant costs in order to definitively conclude whether the entity is a QSPE and we do not believe the benefits of making that determination justify those costs.

Noncontractual Support

We do not believe that the term *noncontractual support*, which is referenced in Appendices B, C, and D of the proposed FSP, encompasses all forms of support that the Board intends to be subject to the guidance in the proposed FSP. We believe that the Board intended to also address support that, although not required, is nevertheless provided pursuant to a newly-established contractual arrangement. For example, a new liquidity facility could voluntarily be put in place by a transferor to an SPE in order to support a market for the SPE's beneficial interests. That liquidity commitment could be evidenced by a contractual commitment even though it was not a previous requirement under the transfer agreement. As such, it would be considered support that was not contractually required, but it would not represent noncontractual support. Therefore, we



recommend that the Board eliminate references to *noncontractual* when referring to forms of support in the proposed FSP.

Statement 140 Disclosure Requirements

Organization of the Statement 140 Disclosure Requirements

We suggest that the Board consider organizing the Statement 140 disclosure requirements under the proposed FSP as follows:

- a) Transfers accounted for as sales where the transferor has continuing involvement with the transferred financial assets.
- b) Transfers accounted for as secured borrowings. We believe the disclosures regarding such transactions need not be as extensive as those for (a) above because the financial assets remain on the transferor's balance sheet. Information about changes in the transferor's risk profile or sensitivity information is less relevant for transfers accounted for as secured borrowings.

We believe the FSP should not require disclosures for financial-asset transfers accounted for as sales when the transferor has no continuing involvement with the transferred assets.

Continuing Involvement

The definition of *continuing involvement* added by paragraph F1(a) of the proposed FSP to footnote 5a of Statement 140 is "any involvement with the transferred financial assets that permits the transferor to receive cash flows or other benefits that arise from the transferred financial assets or that obligates the transferor to provide additional cash flows or other assets to any party related to the transfer." The definition includes as an example of continuing involvement "derivative instruments related to the transferred financial assets." It is unclear whether this definition is intended to include any interest rate swaps entered into with an SPE by a transferor of financial assets to the SPE. Such derivatives could be viewed as unrelated to the transferred financial assets. Accordingly, the Board should clarify whether it intends for these types of derivative instruments to constitute continuing involvement.

Removal of Exemption from Paragraph 17(i)(4) Disclosures

Paragraph E8 of the proposed FSP removes the exemption provided in footnote 10 of Statement 140 that allows a transferor to not provide the disclosures in paragraph 17(i)(4) of Statement 140 if the transferor's only continuing involvement is servicing the transferred financial assets. Given that the basis for conclusions of a Standard generally

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does not change GAAP and will not be included in the codified literature, we suggest that this guidance be provided in the authoritative paragraphs of the proposed FSP.

Principle Objectives of the Disclosures

We believe the following clarifications should be made to paragraph 6 of the proposed FSP (additions are underlined, deletions are struck-through):

The principal objectives of the disclosures required by this FSP for public entities subject to the disclosure requirements of Statement 140 are to provide users of the financial statements with an understanding of:

- a. A transferor's continuing involvement in financial assets that it has transferred to an SPE⁴, regardless of whether the transfer was accounted for as a sale or as a secured borrowing
- b. The nature of any restrictions on <u>transferred financial</u> assets reported by an entity in its statement of financial position <u>because the transfer did not qualify as a sale under Statement 140</u>, including the carrying amounts of such assets
- c. How servicing assets and servicing liabilities are reported under Statement 140
- d. How a transfer of financial assets to an SPE affects an entity's the transferor's financial position, financial performance, and cash flows.

Transferors with no Continuing Involvement

One of the Board's stated objectives in the proposed FSP is to provide information about "a transferor's continuing involvement in financial assets that it has transferred to an SPE." However, paragraph F1(b) of the proposed FSP would amend paragraph 17(h)(2) of Statement 140 to require that an entity disclose "the characteristics of the transfer (including a description of the transferor's continuing involvement with the transferred assets, if any), and the gain or loss from sale of financial assets, including quantitative information about how the gain or loss was determined" (emphasis added). We believe that a transferor with no continuing involvement should not be subject to the disclosure requirements in paragraph 17(h). However, if the Board intends to require those disclosures for transferors with no continuing involvement, then it should discuss the reasons in the basis for conclusions.

Quantitative Information About Gain/Loss Determination

It would be helpful for the Board to provide an example (similar to those previously included in Appendix C of Statement 140) of the paragraph 17(h)(2) requirement (paragraph F1(b) of the proposed FSP) to disclose "quantitative information about how



the gain or loss was determined." Since the gain or loss is the product of applying GAAP to the assets and liabilities recognized as a result of a transfer (and there is no discretion involved in its calculation), it is not clear what information this disclosure requirement is intended to elicit. Alternatively, if the Board intended to require *qualitative* information about how the gain or loss was determined, the requirement should be revised.

Implicit Arrangements

Paragraph F1(b) of the proposed FSP would amend paragraph 17(i)(2) of Statement 140 to require disclosure of "qualitative and quantitative information about the transfer, giving consideration to both explicit and implicit arrangements..." Similarly, the proposed FSP would amend paragraph 17(i)(2)(c) of Statement 140 to require disclosure of the terms of any arrangements that could require the transferor to provide financial support to the transferee or its beneficial interest holders. Because the Statement 140 accounting model is based on explicit rather than implicit arrangements, we believe the Board should provide further guidance regarding the arrangements that would require disclosure under these provisions.

Liquidity Arrangements

Paragraph F1(b) of the proposed FSP would amend paragraph 17(i)(2)(e) of Statement 140 to require disclosure of liquidity arrangements provided by third parties related to the transferred assets. We believe this disclosure requirement is impractical for certain transferors that are not the sponsor or administrator of the transferee-SPE. For example, a transferor of trade receivables to a commercial paper conduit may not be able to obtain the details of the conduit's liquidity facilities even though it has continuing involvement with the conduit.

Disclosure Requirements of FIN 46(R)

Significant Variable Interests

The proposed Statement to amend FIN 46(R) would revise paragraph 6 of FIN 46(R) to define a significant variable interest as an "interest [that] is significant to either the variable interest entity or to the enterprise." This definition would require reporting enterprises to make disclosures regarding variable interests that are not significant to their financial statements. We believe disclosures about interests that are not individually significant to the reporting enterprise should not be required, but where such interests are significant to the reporting enterprise when aggregated with similar interests disclosures about those interests in the aggregate would be appropriate and beneficial to investors. We believe that to provide clarity and ensure consistency in practice, the term significant variable interest should be defined in the proposed FSP, and in FIN 46(R), as an "interest



that is significant, or that could potentially be significant, to the enterprise either individually or when aggregated with similar interests."

Definition of Sponsor

We believe that the Board should define the term *sponsor*. Although paragraph E14 of the proposed FSP states that the Board does not believe it is necessary to provide an accounting definition of the term *sponsor* because the term is used in other accounting literature related to FIN 46(R) without definition, we believe the scope of the other literature that references the term *sponsor* is very narrow while the scope of FIN 46(R) is very broad. Although determining whether an enterprise is a sponsor will necessarily require professional judgment, we believe that the importance of defining the term has increased based on the disclosure requirements of the proposed FSP as well as the requirements of the proposed Statement to amend FIN 46(R) and is essential for a consistent application of those requirements.

Significant Assumptions and Judgment

Paragraph G1(a) of the proposed FSP would add paragraph 22C(a)(2) to FIN 46(R) to require enterprises to disclose their methodology for determining whether the enterprise is (or is not) the PB, including the enterprise's significant assumptions and judgments made and whether a different assumption or judgment could have been reasonably made that would result in a different conclusion. We agree that it is important for a reporting enterprise to disclose its significant judgments and assumptions made in applying FIN 46(R). However, we believe that requiring an entity to second guess its own assumptions or judgments and disclose opposing assumptions or judgments does not provide useful information to financial statement users and could also create unintended difficulties from an audit and legal perspective. Accordingly, we recommend that the proposed requirement to disclose whether a different assumption or judgment could have been reasonably made that would result in a different conclusion be eliminated from the final FSP.

Consolidated Variable Interest Entities

Paragraph G1(b) of the proposed FSP would revise paragraph 23 of FIN 46(R) to require primary beneficiary disclosures in certain circumstances even if the primary beneficiary also holds a majority voting interest in the VIE. We do not believe this change to FIN 46(R) is necessary. Rather, we believe the existing disclosure requirements in GAAP other than FIN 46(R) should apply in those circumstances. The proposed changes to paragraph 23 would require enterprises to analyze entities that are consolidated to determine whether those entities are VIEs and then further determine what subset of those

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entities meet the Statement 141(R) definition of a business and for those entities whether their assets can be used for purposes other than satisfying their liabilities. We believe the Board needs to provide a discussion of how the benefits of the FIN 46(R) disclosure requirements in these circumstances justify the incremental costs should it choose to retain the proposed changes to paragraph 23.

Fair Value Information for Consolidated Assets

Paragraph G1(b) of the proposed FSP would add paragraph 23(d) of FIN 46(R) to require separate disclosure of the fair value of a consolidated VIE's financial assets and financial liabilities from the fair value disclosure requirements of Statement 107. We do not believe fair value disclosures for assets and liabilities of a consolidated VIE should be any different than for similar assets or liabilities of subsidiaries that are consolidated under other authoritative literature.

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We would be happy to further discuss the specifics of these issues in more detail at the request of the Board or the staff. If you have any questions about our comments or wish to discuss any of the matters addressed herein, please contact Mark Bielstein at (212) 909-5419 or Kimber Bascom at (212) 909-5664.

Sincerely,

KPMG LEP