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July 29, 2008



LETTER OF COMMENT NO. 5

Mr. Robert Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Proposed Amendment of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*

Dear Chairman Herz:

The American Bankers Association (ABA)¹ and the ABA Securities Association (ABASA)² have been closely following the project of the Financial Accounting Standards Board (FASB) on the amendment of FASB Statement No. 140 (SFAS 140). ABASA and ABA members have expressed serious concerns with the direction the Financial Accounting Standards Board (FASB) is taking with its project to amend SFAS 140. It is our understanding that the FASB and the Securities and Exchange Commission (the Commission) may be under pressure to make quick changes to the current accounting for securitizations, possibly as soon as year-end. However, we are extremely concerned that the current direction of the project will not provide further transparency or convergence with International Financial Reporting Standards (IFRS) and that the pace of the project does not lend itself to allowing the FASB and its constituents sufficient time to understand fully the implications of the proposals under consideration. We strongly urge you not to issue the proposal until there has been a sufficient due process period that allows for consideration of the impact the proposal would have on the markets, as well as banking regulatory requirements, and ensures sufficient time for orderly implementation of any changes.

¹ The ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members—the majority of which are banks with less than \$125 million in assets—represent over 95 percent of the industry's \$13.3 trillion in assets and employ more than two million men and women.

² ABASA is a separately chartered affiliate of the American Bankers Association representing those holding company members of the ABA actively engaged in capital markets, investment banking, and broker-dealer activities.

We believe that the proposed amendment to SFAS 140 will change the existing standards in significant ways and raises serious concerns regarding a lack of due process relating to these changes. Although we understand the FASB's sense of urgency in addressing concerns with the current standards, the process needs sufficient input from preparers and users of financial statements prior to issuing a formal exposure draft. As we have witnessed in recent days, even the issuance of an exposure draft can have significant market-moving consequences. That means that significant preliminary consideration is needed, including a thoughtful consideration of consequences, even before a proposal is presented for public comment and discussion.

This standard is highly complex, and it has been under consideration by the FASB in one form or another since 2001. Rather than make such sweeping changes within such a short period of time, the process should be orderly and deliberative in order to limit unintended consequences, ensure the outcome satisfactorily addresses the initial concerns that prompted the amendments, and allow preparers sufficient time to implement.

We have the following concerns regarding the amendment³:

1. The project may create significant unintended consequences, including further harming the nation's securitization industry which, while currently stressed, has been an extremely important financing vehicle for consumers.
2. The regulatory impact for financial institutions must be considered prior to issuing a formal exposure draft, as the proposal could have a significant and immediate market response that can impact the capital position of the banking industry.
3. The project lacks an international effort and is inconsistent with the goals of international convergence and transparency.

Risk of Creating Additional Issues

Some of our major concerns, based upon our understanding of the FASB's tentative conclusions, are:

- Lack of transparency -- There is concern that the proposed amendment could cause an over-consolidation which may no longer reflect the economic

³ FASB is currently revising SFAS 140 to eliminate the concept of a "qualified" special purpose entity (QSPE). This rewrite, as we understand it, would eliminate the exemption from FIN 46(R) that many securitizations now follow. The new rules are also expected to require that the primary beneficiary of a securitization, pursuant to FIN 46(R), report the gross assets in a securitization vehicle on its balance sheet. This would likely be accompanied by a liability representing the interests in the securitization that are transferred to outside investors. Thus, assets and liabilities would be added to the sponsoring entity's balance sheet, resulting in a "gross up" of assets and liabilities.

relationships of the investments to the consolidating investors by attributing assets and liabilities to these investors for which they have no legal rights or obligations. The proposed changes would also change the complex rules for existing securitization transactions that the credit markets have relied upon to generate funding for home ownership and other types of loans. It would require banking institutions, finance companies, and other entities that currently do not consolidate issuing entities used in securitization transactions to consolidate some or all of these entities. The gross presentation (increasing both assets and liabilities) for even some of these transactions is likely to reduce transparency for users of financial statements because it distorts the economics of the securitization process. In most cases, the institution has legally transferred the rights and obligations to a portion or all of the interests in the vehicle. Effectively, entities would include on their balance sheets assets they do not own and liabilities for which they are not responsible.

- Impact on products for customers – The proposed changes could have a negative impact on current credit and lending markets. Securitization structures are used commonly in the finance industry to provide liquidity and credit across a broad spectrum of instruments. Among those assets affected are: residential mortgages, commercial real estate loans, home equity loans and lines of credit, student loans, auto loans, consumer loans, credit card loans, and various other receivables. Without the liquidity provided by securitization structures, there will be less credit available to individuals, communities, and businesses.
- Insufficient marketplace analysis – The nation’s economy has recently suffered a significant downturn. We are concerned that the release of a proposal that has not been well vetted would result in a significant distraction and new source of insecurity and disruption to fragile markets already struggling to cope with fundamental changes.

Regulatory Capital Considerations

We understand that the federal banking regulators are closely following the FASB deliberations. However, we believe it is in everyone’s best interest to move cautiously and involve all affected parties even more closely in the deliberation process prior to issuing a formal proposal.

The gross presentation of the securitization/consolidated assets is problematic for domestic banks because it inflates both assets and liabilities, likely resulting in a significant change in the capital ratio calculations required by the banking regulators. The gross presentation may lead to a requirement to hold increased levels of capital and, therefore, less capital will be available for investing and operations, reducing the credit available to Main Street America. We believe that the banking regulators should be actively involved in this dialogue prior to the release of a proposal due to the potentially severe accounting consequences and their impact on capital requirements.

International Convergence

We are concerned that the proposed amendments do not help achieve convergence with IFRS. The convergence of international and domestic accounting standards has been a significant goal for the Commission and the FASB, officially, since the issuance of a memorandum of understanding (Norwalk Agreement) in October of 2002. The Commission's recent acceptance of filings by foreign registrants under IFRS and its proposal to allow domestic registrants to adopt IFRS demonstrate that we are moving on a relatively fast track toward accepting IFRS in lieu of U.S. generally accepted accounting principles (GAAP).

The result of the approach outlined thus far by the FASB would be to require banks to implement significant changes to their consolidation and de-recognition accounting on a limited retrospective basis by 2009/2010, which would be followed by yet another set of IFRS-compliant "converged" accounting changes shortly thereafter. This approach places a significant strain on the banking community by requiring it to implement new U.S. GAAP in 2009 in this very complex and pervasive area of accounting, with implementation of different standards (IFRS), possibly very shortly thereafter.

We believe that the constant change in financial instrument accounting may be causing too much confusion and too little transparency for users of financial statements, as the applicable standards will have reflected three different approaches to consolidation and de-recognition accounting within a relatively short period of time (assuming the FASB and IASB are successful in achieving their stated convergence timeline). We do not think that rapid fire changes contribute to the FASB's mission to make financial reporting transparent.

These areas of accounting have been characterized by frequent and numerous changes, and these matters have seldom left the FASB's agenda in recent years. The original SFAS 140 was a revision of SFAS 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, and has in turn been revised by FASB Statement No. 156, *Accounting for Servicing of Financial Assets*, and by three subsequent FASB Staff Positions (FSPs). FIN 46, which was one of the few standards that was issued after its own effective date, has since been amended by FIN 46R, *Consolidation of Variable Interest Entities – An Interpretation of ARB No. 51* and by seven FASB Staff Positions. A major amendment, just prior to international convergence, may result in further confusion. A joint effort between the FASB and the IASB would be more consistent with the efforts for international convergence.

Conclusion

Securitization structures are important vehicles for providing financing in the marketplace. Proposed accounting changes must be thoroughly vetted in order to achieve the appropriate level of transparency without doing unwarranted harm to individuals, business, and communities, and those who provide funding to them. Therefore, we urge you to take a step back, involve the IASB, the banking industry

and its regulators and other interested parties prior to issuing a proposal, to ensure that the proposal will better enhance transparency and better reflect economic reality.

We appreciate your consideration of these matters and welcome the opportunity to discuss them with you.

Sincerely,



Wayne A. Abernathy
EVP – Financial Institutions Policy
and Regulatory Affairs
American Bankers Association



Beth L. Climo
Executive Director
ABA Securities Association

cc: Christopher Cox, Chairman, U.S. Securities and Exchange Commission
Sheila Bair, Chairman, Federal Deposit Insurance Corporation
John C. Dugan, Comptroller of the Currency
Randall S. Kroszner, Governor, Federal Reserve Board
John M. Reich, Director, Office of Thrift Supervision
Conrad Hewitt, Chief Accountant, U.S. Securities and Exchange
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