



November 14, 2008

LETTER OF COMMENT NO. 29

Mr. Russell Golden Technical Director Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Via email to director@fasb.org

Re: File Reference Number 1610-100, Proposed Statement of Financial Accounting Standards, Accounting for Transfers of Financial Assets, an amendment to FASB Statement No. 140

Dear Mr. Golden:

LNR Property Holdings, Ltd. appreciates the opportunity to provide comments and observations on the Financial Accounting Standards Board's ("FASB") Exposure Draft of Proposed Statement of Financial Accounting Standards, Accounting for Transfers of Financial Assets, an amendment to FASB Statement No. 140 (the "Exposure Draft"). We are a leading commercial real estate investment, finance, management and development company which, in part, engages in making real estate finance investments, including investments in unrated and non-investment grade commercial mortgage-backed securities ("CMBS"), high-yield real estate loans and other subordinate real estate interests. As an investor in CMBS, we often purchase the unrated and non-investment grade securities issued by CMBS trusts. We also engage in servicing activities, primarily related to managing and working out problem assets.

While we support the FASB's efforts to improve financial reporting surrounding transfers of financial assets and the related disclosures of such transactions, we believe that certain of the proposed changes will not accomplish these objectives. Rather, we believe the implementation of these changes will simply result in administrative and operational challenges to preparers at a time when the profession is moving towards international convergence. In reviewing the Exposure Draft, we have identified the following issues which we believe require further consideration by the FASB:

- Clarification of which instruments meet the definition of a participating interest
- Ambiguity of certain disclosure requirements
- The inextricable link between the elimination of the qualifying special purpose entity ("QSPE") concept and the proposed changes to FASB Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities ("FIN 46(R)")
- Consideration of the trend toward international convergence

Each of these matters is explained in further detail below.

Participating Interests

Paragraph 8B(a) of the Exposure Draft states, in part, that a participating interest in an "individual financial asset... represents a proportionate ownership interest in an entire financial asset." Because the Exposure Draft distinguishes between the sale of an individual financial asset in its entirety and the transfer of a participating interest in an individual financial asset, it is critical that further clarification is provided for what constitutes an "individual financial asset." Specifically, we do not believe this paragraph addresses a participation deal structure commonly used in commercial real estate mortgage securitizations.

For instance, it is unclear as to whether a class of securities (i.e., AAA-rated through unrated) in a securitization structure would qualify as an "individual financial asset." As currently drafted, the term "individual financial asset" could be understood to mean either the security class or the securitized assets underlying those securities. Consistent with the fundamental financial components approach which formed the basis of FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("FAS 140"), we believe that the FASB should include individual asset classes and any other financial instruments recognized for accounting purposes in its guidance of what constitutes an "individual financial asset."

If this clarification is not made, the Exposure Draft would require that a transfer of a class of securities be treated as a secured borrowing simply because of the inherent subordination often present in the securitization structures which commonly issue these securities. It seems unreasonable to conclude that the sale of a discreet class or portion of a class of securities in a securitization structure would be considered a secured borrowing. Such a characterization would be inconsistent with the fundamental financial components approach of FAS 140 and would not reflect the underlying economic substance of the transaction. Such treatment would also ignore how these securities actually trade in the marketplace.

Disclosure Requirements

Paragraph 17(i)(1) of the Exposure Draft requires an enterprise to disclose its implicit arrangements with financial assets that it has transferred to a special purpose entity. As currently drafted, the requirement leaves too much uncertainty as to what arrangements constitute implicit arrangements. Since the accounting model in FAS 140 is largely based on explicit arrangements, we believe that further clarification and guidance is warranted as to what types of implicit arrangements should be considered. In order to limit the disclosure to information which is relevant to financial statement users, we believe that only those arrangements which could have a significant impact on the financial statements should be included in this disclosure requirement. Without further clarification, we believe the requirement as currently drafted will ultimately lead to inconsistent interpretation and application.

Elimination of QSPE Concept

We provided a letter to the FASB dated November 14, 2008 in which we commented on the proposed amendments to FIN 46(R). Just as the concepts of derecognition and consolidation are linked, so are the comments we provide to you herein and in that letter. It would be

contradictory to conclude on the one hand that a transfer of financial assets to a securitization vehicle met the criteria for sale treatment by FAS 140, but on the other hand required consolidation of those same assets by FIN 46(R). As such, we believe that the two standards ultimately issued by the FASB with regards to both derecognition and consolidation principles should be consistent and ultimately based on the overriding concept of a controlling financial interest.

While the elimination of the concept of a QSPE is not troubling in and of itself, we believe that significant improvements must be made to the current exposure draft of FIN 46(R) in order for these standards to be jointly operational. The introduction of the highly subjective determination of who "has the power to direct matters that most impact the activities of the entity" by the current FIN 46(R) exposure draft is one which is certain to create confusion and inconsistency amongst preparers. Further, to require consolidation of a CMBS trust by a residual interest holder who is named special servicer of the trust seems entirely inconsistent with the concept of a controlling financial interest. As we note in our FIN 46(R) letter, consolidation of such structures on a residual interest holder's financial statements would be misleading and confusing to investors, particularly when the mere holding of a residual interest in such an entity does not convey any actual controlling financial interest over the entity's assets or a responsibility for its liabilities. Consolidation will simply obscure the residual interest holder's financial results and significantly decrease transparency to the users of its financial statements.

International Convergence

With the continued increasing emphasis on convergence towards International Financial Reporting Standards ("IFRS"), we do not believe that a significant change to a new derecognition model, especially one that diverges from the current international model, is justified at this time. Making significant changes to our systems and processes pursuant to the proposed amendment would be costly, time consuming, and, considering the impending trend toward convergence to an entirely different model, largely inefficient. Thus, we strongly recommend the pursuit of a joint plan in coordination with the International Accounting Standards Board to develop a consolidation model that will eventually apply under both U.S. generally accepted accounting principles and IFRS.

We thank the Board for its consideration of our recommendations and would be pleased to discuss these issues in more detail with the Board members or the FASB staff at your convenience.

Respectfully submitted,

/s/ Rina Paniry

Rina Paniry
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LNR Property Holdings, Ltd.