

September 14, 2007

Mr. Russell G. Golden  
Director, TA&I – FSP  
Financial Accounting Standards Board  
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LETTER OF COMMENT NO. 19

**File Reference: Proposed FSP 140-d  
Proposed FASB Staff Position No. FAS 140-d, “Accounting for Transfers of Financial Assets and Repurchase Financing Transactions”**

Dear Mr. Golden:

Deloitte & Touche LLP is pleased to comment on proposed FASB Staff Position No. FAS 140-d, “Accounting for Transfers of Financial Assets and Repurchase Financing Transactions” (the “proposed FSP”).

While we support the FASB’s efforts to provide guidance on the accounting for transfers and repurchase financing transactions, we do not support the issuance of the proposed FSP as currently drafted. The situations in which it requires transactions to be linked are too broad and the guidance cannot be practically implemented without undue cost.

Specific comments on the proposed FSP are set out below.

**Linkage Criteria Should Be Modified**

The proposed FSP indicates that a transferor and transferee entering into (a) an initial transfer of a financial asset and (b) a subsequent repurchase financing involving the same financial asset would be required to link these transactions for accounting purposes unless certain criteria are met. That is, if the criteria are not met, the FSP requires linking these transactions for accounting purposes, even when (1) there has been a substantial period (e.g., years) between the initial transfer and the repurchase financing and (2) the subsequent repurchase financing was not a contemplated transaction at the time of the initial transfer. Having to identify, among thousands of prior transactions over long periods, repurchase financing transactions that involve the same financial asset and same counterparty (or consolidated affiliates) in a previous sale will be arduous and costly and constitute a task fraught with potential missteps that does not provide a better presentation of the position of either party.

The scope of the FSP should be limited to situations in which the initial transfer and repurchase financing are entered into contemporaneously or in contemplation of one another. In such cases, presentation of an initial transfer and repurchase financing as a forward agreement for the future transfer of the financial asset appropriately depicts the financial position and consequences of the two counterparties. The counterparties could have achieved the same economics through a forward arrangement without the initial transfer ever occurring. However, consider those

circumstances in which the initial transfer occurs without the transferor having any continuing involvement in the asset (e.g., no direct or indirect agreement to provide financing collateralized by the financial asset) and time has passed before a repurchase financing is initiated. In such cases, the initial transferor's rights to the financial asset, as a result of the subsequent repurchase financing, do not emanate from the initial transfer; instead, they are identical to the rights that would be obtained if another entity had been the initial transferor.

Additionally, the criteria for overcoming the presumption that these transactions should be linked depart from the criteria already present in existing authoritative literature providing guidance on linking independent transactions. While there may be a need for a linkage model because Statement 140<sup>1</sup> is not purely a control-based model, the FASB should not unnecessarily create complexity by proposing a new model when current principles would suffice. The FASB should consider the following criteria (which are based on criteria found in existing guidance)<sup>2</sup> to determine whether a series of transactions should be viewed as a "unit" or "linked":

- The transactions were entered into contemporaneously and in contemplation of one another.
- The transactions were executed with the same counterparty (or structured through an intermediary).
- The transactions relate to the same risk.
- No apparent economic need or substantive business purpose for separately structuring the transactions exists that could not also have been accomplished in a single transaction.

Existing guidance indicates that transactions should be linked if they occur contemporaneously and in contemplation of one another. Although not written in the context of transfers and repurchase financing transactions, the existing guidance could also be applied to these transactions and would produce results that are faithfully representative of the positions of the counterparties.

### **Paragraph 55 of Statement 140 May Require Amendment**

The proposed FSP does not address paragraph 55 of Statement 140, which requires transferors and transferees to continuously consider whether the original criteria for sale accounting are no longer met. The transactions that the proposed FSP addresses seem to fall within the scope of paragraph 55, whether or not the original purchase and the repurchase financing are "linked." If the FASB decides to revise the guidance as suggested above, it may be necessary also to amend paragraph 55 to avoid creating a conflict among the guidance. For example, it may necessary to limit paragraph 55 to apply only to regaining control of transferred assets in situations in which the transferor had continuing involvement with the asset from the point of the original transfer.

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<sup>1</sup> FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*.

<sup>2</sup> These criteria are based on and are similar to the following authoritative guidance: Derivatives Implementation Group ("DIG") Issues No. K1, "Miscellaneous: Determining Whether Separate Transactions Should Be Viewed as a Unit" and No. F6, "Fair Value Hedges: Concurrent Offsetting Matching Swaps and Use of One as Hedging Instrument" and EITF Issue No. 98-15, "Structured Notes Acquired for a Specific Investment Strategy."

## **Level 1 Measurement Criteria Is Too Restrictive**

If the FASB decides to retain the framework in the proposed FSP, the Board should reconsider Paragraph 7(c) which, to avoid linkage, requires a quoted price in an active market (a Level 1 input under Statement 157<sup>3</sup>) to exist for the financial asset subject to the transfer and repurchase financing. This paragraph should be changed to require the financial asset be readily obtainable in the marketplace rather than subject to Level 1 pricing.

In the FSP's basis for conclusions, the Board emphasizes the importance of the marketability of the financial asset. Many financial assets subject to transfer and repurchase transactions, such as mortgage-backed securities, are traded over-the-counter and therefore may often be categorized as having Level 2 inputs (e.g., having significant other observable inputs) under Statement 157. While these instruments do not have quoted market prices, many are readily obtainable in a marketplace with sufficient price transparency to determine whether the transfers contain off-market rates. In addition, the requirement in paragraph 7(c) seems inconsistent with paragraph 7(d), which states that the transferor cannot sell or repledge the collateral at any point before the settlement of the repurchase financing unless the asset is **readily obtainable**.

## **Initial Recognition Upon a Subsequent Repurchase Financing**

The FSP would be improved if paragraph 9 clarified the accounting for the re-recognition of the initially transferred asset if it is reacquired in a repurchase financing. The criteria in paragraph 7 require that the two transactions be linked and the sale requirements of Statement 140 are not met. The FSP should explicitly state that the reacquired asset should be recorded at its fair value at the date of reacquisition. Readers might incorrectly infer that the original sale should be reversed and the asset recorded at its original carrying amount because paragraph 9 uses the phrase "if the linked transaction does not meet the requirements for sale accounting."

## **Rationale for Paragraph 7 Criteria Should Be Provided**

Paragraph A5 fails to explain either why the criteria in paragraph 7 are appropriate or how they were determined. Such an explanation might result in more consistent application and would assist preparers in complying with the disclosures required in paragraph 12.

## **Effective Date Should Be Postponed**

The proposed FSP provides that the FSP shall be effective for fiscal years beginning after November 15, 2007, and requires application to existing repurchase financings. We understand that the adoption of the FSP as currently proposed will require preparers to make significant investments in system development. Current systems generally are unable to identify repurchase financing transactions involving previously transferred assets, a task made especially complex when the transaction volume is large and the period between the initial transfer and the repurchase extensive. If the final FSP is issued in its current form, the FASB should evaluate the extent of anticipated implementation difficulties and perhaps consider substantially delaying the FSP's effective date.

Even if substantial revisions are made to the scope of the FSP, the proposed effective date is not practicable because it appears likely that the final FSP will be issued too close to the year-end of many companies.

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<sup>3</sup> FASB Statement No. 157, *Fair Value Measurements*.

### **Coordination With the Statement 140 Amendment**

In addition to the proposed FSP, the FASB is considering other amendments to Statement 140, including a related issue that would address the legal isolation criteria in paragraph 9(a) of Statement 140. Issuance of this proposed FSP as a final standard, followed soon after by further amendments to Statement 140, could result in multiple system changes for preparers and would require users to follow multiple changes to the accounting for transfers of financial assets. The FASB should obtain insights from constituents about the benefits and costs of issuing separate standards versus combining these projects into one standard with a single transition and effective date.

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Deloitte & Touche LLP appreciates the opportunity to comment on the proposed FSP. If you have any questions concerning our comments, please contact Robert Uhl at (203) 761-3152.

Yours truly,

Deloitte & Touche LLP

cc: James A. Johnson