



September 18, 2007

LETTER OF COMMENT NO.

17

Mr. Russell G. Golden  
Director of Technical Application & Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**File Reference: Proposed FSP FAS 140-d**

Dear Mr. Golden:

We appreciate the opportunity to comment on the tentative conclusions in proposed FASB Staff Position 140-d, "Accounting for Transfers of Financial Assets and Repurchase Financing Transactions" ("FSP 140-d"). Huron Consulting Group has significant experience in advising clients on complex accounting issues and restatement matters, including identifying the causes for the misapplication of GAAP. Although we agree there is a need for guidance in this area, we do not believe the Board should finalize proposed FSP 140-d until it has made certain fundamental changes to the guidance in paragraph 7 of the proposed FSP. First, we would prefer guidance based on some fundamental principle. While paragraph 6 introduces a principle with which we could agree, it is quickly overtaken by the rules contained in paragraph 7. Second, we believe the rules contained in paragraph 7 are largely unnecessary to achieve the objective stated in paragraph 6 and will only result in treating many of these transactions as forward purchase contracts by the initial transferee and forward sale contracts by the initial transferor. Third, the presumption that the purchase of a financial asset and the use of that financial asset in a repurchase agreement are linked differs from other guidance issued by the Board, such as Statement 133 Implementation Issue K1, in which the legal form of transactions is respected unless certain criteria indicating the transactions should be combined are met. Finally, we are concerned about the potential for companies to manage earnings using the criteria of paragraph 7.

We have the following concerns with the rules proposed in paragraph 7:

- A significant number of the securities financed under repurchase agreements do not have quoted prices in an active market. For example, we understand that many companies that have early-adopted FASB Statement No. 157 have concluded that mortgage-backed securities will have a fair value based on Level 2 inputs. We fail to see how the classification of a financial asset under FASB Statement 157 is relevant to determining whether a purchase and a repurchase financing should be linked in most circumstances. While we understand that it is more difficult to determine that a

transaction involving a financial asset that falls into Level 3 of the fair value hierarchy was entered into at fair value, we do not believe it is appropriate to establish a rule that any collateral that does not fall within Level 1 of the fair value hierarchy is automatically a forward contract. We believe the current accounting involving those types of assets is well understood by readers of the financial statements and does not create an abusive situation. Alternatively, we recommend for the Board to make the decision to link a policy decision similar to the fair value option and provide disclosure to investors so that investors understand the decision made by a company.

- We agree that the presence of an explicit commitment to enter into a subsequent repurchase financing should result in linking the two transactions. However, we do not believe the final FSP should include a requirement to consider “implied commitments.” We believe the standard based on an explicit commitment would be easier to apply and result in a more consistent application if, instead of requiring companies and their auditors to look for implied commitments, We are concerned that it will be difficult, if not impossible, for an auditor to conclude that an implied commitment did not exist, particularly when the repurchase financing was entered into immediately after or at the same time as the purchase transaction, because those commitments are not generally reduced to writing. Therefore, one would not expect to find any evidence of a commitment (to that end, we believe paragraph 7(a) of the proposed FSP describes an explicit commitment, not an implied commitment), but one could not necessarily rule out the possibility that such a commitment existed. Because the determination of whether an implied commitment exists is a subjective matter, we are concerned that if the FSP is finalized as proposed, the application of that guidance could lead to restatements given others can arrive at a different conclusion as to whether there was an implied commitment. If the final FSP includes a requirement to consider implied commitments, we believe the Board should clarify when an implied commitment exists. For example, would the fact that a company typically enters into repurchase financings with a particular investment bank be indicative of an implied commitment if the company enters into a repurchase financing on a security it purchased from the investment bank?

We are also concerned that the guidance on linking separate transactions could lead to opportunities to manage earnings given the lapse of time is not relevant to the analysis. For example, a company that finances the purchase of a security with a repurchase agreement may elect to change how it accounts for that security based on its views of future interest rates. If the company determines it would be preferable to reflect the security on its balance sheet and recognize interest on an accrual basis, it would enter into a repurchase agreement with a third party different from the initial transferor. If the company later determines it would be preferable to reflect a forward contract and recognize earnings on a fair value basis, it could close out its original repurchase agreement and enter into a repurchase agreement with the initial transferor and account for the arrangement as a forward contract. If a company had securities classified as available for sale, the guidance in the proposed FSP would allow the company to avoid the presumption in paragraph 15 of FASB Statement 115 (that transfers to or from trading should be rare) and selectively recognize in income gains or losses that were previously

recognized in other comprehensive income. We fail to see how this accounting will be considered an improvement by users.

If the Board decides to retain the conclusions in proposed FSP 140-d, we believe the final FSP should discuss the ramifications to the initial transferee if it enters into a repurchase financing with the original transferor involving a held to maturity security. Would the initial transferee be required to account for the repurchase financing transaction as a sale of a held to maturity security, which would thus “taint” the held to maturity classification of all other securities? Would that conclusion be affected by the timing of the repurchase financing in relation to the initial transfer (i.e., if the repurchase financing occurred at the time of the initial transfer, it would not be a tainting event, whereas if it occurred two years after the initial transfer, it would be a tainting event)?

We are also confused about the initial transferor’s accounting for a repurchase financing that takes place in a reporting period subsequent to the one in which the transferor reported the initial transfer as a sale. Would the transferor be required to restate results for the prior period to reverse the effects of sale accounting? Or would it account for the repurchase financing as the acquisition of the transferred security?

If the Board or the Staff would like to discuss any of our comments, please call Ken Evola at 202-585-6860, or Jeff Ellis at 312-880-3019.

Sincerely,

*/s/ Kenneth J. Evola*

Kenneth J. Evola  
Managing Director

*/s/ Jeffrey H. Ellis*

Jeffrey H. Ellis  
Managing Director