360 Madison Avenue New York, NY 10017-7111 Telephone 646.637.9200 Fax 646.637.9126 www.bondmarkets.com

1399 New York Avenue, NW Washington, DC 20005-4711 Telephone 202.434.8400 Fax 202.434.8456 St. Michael's House 1 George Yard London EC3V 9DH England Telephone 44.20.77 43 93 00 Fax 44.20.77 43 93 01

Letter of Comment No:

File Reference: 1200-QSU



March 31, 2005

Ms. Patricia Donoghue, Project Manager Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, Connecticut 06856-5116

Re: QSPE Project

Dear Pat:

Thank you for meeting with the group of representatives from The Bond Market Association¹ ("TBMA"), the International Swaps and Derivatives Association, Inc. ("ISDA") and the American Securitization Forum ("ASF") on March 3, 2005. The meeting offered the opportunity for a very helpful exchange of views, and allowed the organizations to update their respective members about this important project. The Bond Market Association is writing to raise several points which we believe need further discussion with respect to transfers involving portions of financial assets.

In particular, we were surprised by your description of the meaning of "transfers of portions of financial assets" to also include transactions involving both one-step and two-step transfers, and not merely transfers of portions of financial assets by contract.

As we understood the deliberations on this point at the Board meetings, the Board's discussions focused on partial transfers made pursuant to a contract, such as a loan participation, in which case the use of a qualifying special purpose entity ("QSPE") would be required. We did not understand this to extend also to situations where 100% of the financial assets are first transferred to a bankruptcy-remote special-purpose entity ("BRSPE") which in turn transfers 100% of the financial assets to a special purpose entity ("SPE")², with the transferor retaining a beneficial interest ("BI") in that SPE. (Presumably this would apply even to situations where the transferor retains a AAA-rated class, or any portion thereof.) It also is not clear to us what the Board's rationale for requiring the use of a QSPE in this situation is.

¹ The Bond Market Association is an international trade association representing securities firms and banks that underwrite, distribute and trade in fixed income securities both in the US and internationally. More information about the Association and its members and activities is available on its website at www.bondmarkets.com. This letter was prepared by the Association's Accounting Policy Committee.

² Until this meeting we had believed that this SPE did not need to be a QSPE.

Patricia Donoghue, FASB March 31, 2005 Page 2

Consider the following fact pattern, which is quite common: a transferor sells 100% of a financial asset to a BRSPE in a "true sale" for legal purposes. A substantive non-consolidation opinion is obtained, and the transferor does not have any repurchase option or obligation. Thus, paragraphs 9a and 9c of FASB Statement No. 140 ("FAS 140") are met. Next, the BRSPE transfers 100% of the financial assets to an SPE. Assume that the SPE is not a QSPE because, for example, it has discretion on disposition of the transferred financial assets. The non-QSPE has the ability to pledge or exchange those assets and thus, paragraph 9b is met. If the transferor retains a BI in that non-OSPE, the BI will have to be evaluated as a variable interest in a variable interest entity ("VIE"). If the transferor has the majority of the expected losses or the majority of the expected residual returns, they will be the Primary Beneficiary and as such will be required to consolidate. If they do not have the majority of either expected losses or expected residual returns, then it is inappropriate for them to consolidate the VIE. Based on our discussion at the March 1 meeting, we now understand that under the Board's proposed approach, the Board would conclude that the FASB Interpretation No. 46(R) ("FIN 46R") analysis would not even be relevant to this fact pattern, in that the transferor did not even meet the conditions for sale accounting. We are struggling to understand the basis for this conclusion, and why you think it matters. Further, we don't believe that legal isolation is strengthened by use of a QSPE rather than an SPE.

Collateralized debt obligations ("CDOs") are a very common example of the above fact pattern. In fact, there are often multiple transferors to the CDO VIE. Would the Board's position require us to conclude that each transferor has a secured financing if they acquire any portion of the VIE's variable interests?

Transfers of receivables to multi-seller asset-backed commercial paper vehicles are another example. FIN 46R provides that entities that transfer assets to VIEs, and provide certain credit enhancement for those transferred assets, do not have a variable interest in the VIE so long as they do not contribute more than half of the assets to the vehicle and they do not have another variable interest in the entity as a whole. Accordingly, none of the transferors would be the Primary Beneficiary under FIN 46R. Assuming all other derecognition criteria of paragraphs 9a, b and c of FAS 140 are met, why should those unrelated transferors each have a financing simply because they transferred financial assets or interests in financial assets to a VIE that was not a QSPE?

We ask that the Board reconsider its tentative decision on this point, in that always using a QSPE is unnecessary to achieve the appropriate accounting. The high hurdles of FIN 46R and of paragraphs 9a, b, and c of FAS 140 are sufficient to prevent abuses.

Patricia Donoghue, FASB March 31, 2005 Page 3

We appreciate the opportunity to present our views and look forward to discussing them further with you. If it would be helpful to the Board and the staff, we would be happy to make Association staff and member firm personnel available to meet and discuss the points raised in this letter. Please address any questions or requests for additional information to the undersigned at 212-449-2048, or to Sarah Starkweather of the Association staff at 646-637-9292.

Sincerely yours,

Esther Mills
First Vice President, Merrill Lynch & Co., Inc.;
Chair, Accounting Policy Committee of
The Bond Market Association

Via email: padonoghue@fasb.org

cc: Robert Herz (rhherz@fasb.org)

Eric Smith (mesmith@fasb.org)