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

Subject: File Reference No. 1200-001

Dear Bob:

GE appreciates the opportunity to provide its views on the Exposure Draft of the Proposed Statement of Financial Accounting Standards, *Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an amendment of FASB Statement No. 140* (the ED). Given the scope exception provided for QSPEs in FIN 46, we understand the need to provide additional guidance on the permitted activities of these entities as defined in SFAS 140. That said, we believe that it is essential that the revisions proposed in the ED are consistent with the control-based framework that is at the core of the financial components approach. Without consideration of the proposed amendments, FAS 140 is already among the most difficult and complex standards ever issued by the FASB. In our judgment, a number of the changes proposed in the ED are entirely inconsistent with the FAS 140 framework and will make applying the standard even more difficult than it already is. We therefore do not support finalization of the ED without significant modifications. Our specific comments follow.

Overall Observations

The guiding principles of FAS 140 are the derecognition of assets when the entity has surrendered control and the recognition of assets and liabilities retained by the transferor under the financial components approach. The ED introduces risks-and-reward provisions in the form of specific prohibitions that are inconsistent and, in our view, incompatible with the model. Many of the restrictions imposed by the amendment have nothing to do with concept of control and those that do are incomplete and ambiguous. We believe these changes will only confuse and confound those who seek to understand their practical application. We also observe that provisions whose sole purpose is to prohibit specific abuses often have significantly broader consequences than those originally intended. We see evidence of that in this ED. We therefore recommend the Board revisit requirements that depart from the fundamental tenets of FAS 140 and either delete them or modify them to be consistent with rest of the standard. We believe that this can be accomplished by addressing issues surrounding decision-making held by the QSPE.

Commitments To Deliver Cash

The Exposure Draft prohibits a QSPE from entering into an agreement with the transferor, its affiliates, or its agents to deliver cash or other assets to it or the holder of its beneficial interests. A commitment to deliver cash or other assets does not equate to control. Rather, it is a form of credit enhancement that is no different economically than providing overcollateralization. In accordance with the financial components approach, such commitments would be recognized as liabilities on the date of the transaction in the same way that the overcollateralization would be recognized as an asset. The ED does not amend FAS 140 to eliminate the requirement to "recognize a liability incurred as proceeds to a transaction" – a requirement that is central to the financial components approach. We therefore question how, from a conceptual standpoint, these two requirements can coexist in the same standard.

In addition, restrictions on commitments to deliver cash are limited to QSPEs and not to other transactions for which a QSPE does not exist (e.g., participations). Such commitments should not be an issue in either case because the significance of such a commitment will determine whether legal isolation (paragraph 9a) is achieved. While we appreciate that the Board has engaged in considerable debate over the possible legal differences between overcollateralization and contingent commitments to deliver cash, we would encourage it to more fully develop an understanding of this issue and the effect that it has on the legal isolation standard. We believe that the proposed restriction can best be described as a "quick fix" of the legal isolation requirement and that the Board would reach a different answer if it took additional time to gain a more thorough understanding of the legal foundation for determining the bankruptcy remoteness of an SPE.

<u>Reissuance of Beneficial Interests</u>

The Exposure Draft introduces restrictions on a QSPE if it has the ability to reissue beneficial interest but does not provide a definition of "re-issuance", nor does it indicate what is deemed to be a "decision" – which renders the restrictions impractical to interpret and apply. We believe the FASB intended for a re-issuance to mean the prepayment and refinancing of a beneficial interest and that the restrictions should <u>not</u> apply to the replacement of maturing beneficial interests nor the issuance of new beneficial interests upon the transfer of new assets to the QSPE. We believe that clarification of these terms is important to the proper application of the requirement and that the FASB should seek out advice from knowledgeable constituents if it believes that they should also apply to the latter two categories of financing.

<u>Derivatives</u>

The ED eliminates the ability for a transferor to enter into passive derivative instruments with a QSPE by prohibiting a QSPE from entering into <u>any</u> derivative with the transferor or its affiliates. We understand the Board's intent is to prohibit a QSPE to enter into a derivative that transfers credit risk of the assets back to the transferor. Clearly, however, an interest rate swap which solely exchanges fixed and floating rate cash flows determined at the outset of the transaction is both passive in nature (which corresponds with the intent of paragraph 35c(2) of FAS 140) and is neutral with respect to the transfer of credit risk. The existence of such a swap is not demonstrative of control, nor does it reflect the retention or risks or rewards.

We recognize that the original draft of FAS140 addressed control of assets transferred to QSPE; it did not recognize the potential opportunities to exercise discretion in the management of the liabilities of a QSPE. We therefore understand the need to amend FAS 140 to also address maintaining effective control over liabilities of a QSPE. However, we would encourage the Board to revise its language to be consistent with the manner in which Paragraph 45 addresses assets of QSPE.

Two-Step Transfers

The proposed restriction on two-steps transfers appears to be another rules-based approach to address a specific abuse. This shotgun approach to governance has maimed many innocent bystanders. There are numerous examples of non-recourse transactions, which do not terminate in a QSPE. We do not believe it was the intent of the FASB to restrict such activity, but we believe this provision should be eliminated in its entirety.

Transition

The transition rules provide grandfathering to QSPEs that maintain their qualifying status under previous accounting standards as long as it does not receive beneficial interests after the effective date and does not receive assets other than those it was committed to receive under an arrangement made before the effective date. In the event that the FASB chooses to move forward with the Proposed Amendment without regard to the comments received from constituents, we believe the grandfathering should be extended to all QSPEs created prior to the effective date of FIN 46 regardless of their ongoing activities. We believe that the FASBs intent was to provide restrictions on the activities of a QSPE so that the scope exception within FIN 46 was not abused. Many of the entities were created prior to the issuance of FIN 46 in accordance with the guidance that was available, continue to have limited activities and could not have possibly anticipated that a scope exception relating to their consolidation status would exist at some time in the future. Therefore, these entities should not be required to be evaluated as a FIN 46 entity in the event they fail the "new" QSPE criteria.

Next Steps

We note that in developing the guidance in FAS 125 and FAS 140, the Board implicitly deferred to the expert opinions of attorneys to assist constituents in determining whether the requirements for true sale and bankruptcy remote status were satisfied. Having established and affirmed true sale and legal isolation as fundamental tenets of derecognition, we would encourage the Board to focus the proposed Amendment on the clarification of these principles, rather than the creation of a labyrinth of specific permissions and prohibitions focused on specific activities considered to be egregious. We also would suggest that the Board devote additional time and effort to understanding the factors used by attorneys in rendering true sale and bankruptcy-remote opinions.

We recognize that the current absence of sufficient guidance on permitted activities of liabilities of QSPE is an area of concern and one that is not satisfactorily addressed in the ED. We therefore encourage the Board to devote additional resources to clarifying the proposed language in the ED that is intended to address this issue.

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We look forward to participating in the FASB's future deliberations on this topic in any manner that would be helpful to a successful resolution of these issues. In that regard, we would be pleased to make available representatives from our Capital Market Services business, who have in-depth knowledge on securitization transactions, to assist the FASB staff in developing solutions to the issues raised in this letter. Please feel free to contact me at (203) 373-3563, if you have questions on this response or you wish to act on this offer.

Sincerely,

Mitch Danaher