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Ms. Suzanne Q. Bielstein
Director, Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
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Letter of Comment No: 31
File Reference: 1200-001
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Re: File Reference 1200-001
Exposure Draft on Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an
Amendment of FASB Statement No. 140

Dear Ms. Bielstein:

We appreciate the opportunity to provide comments on the Exposure Draft for *Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an amendment of FASB Statement No. 140* (the "Exposure Draft"). Although we recognize the FASB's intent to achieve consistency with FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* ("FIN 46"), the short timeframe permitted for commenting on the Exposure Draft makes it difficult for constituents to fully evaluate the impact of the Exposure Draft and to comment sufficiently on all aspects of it. This short time for initial evaluation, combined with an imminent proposed effective date, foretell likely difficulty in general implementation and in compliance with the effective date itself.

We are concerned that the Exposure Draft proposes certain new requirements for qualifying special-purpose entities (QSPEs) that are overly restrictive and appear to be unnecessary, given existing US GAAP. The new requirements that raise particular concern relate to the prohibited arrangements between a QSPE and a transferor, the restrictions on equity holdings by a QSPE and the requirement for using a QSPE in two-step asset transfers. In addition, while we recognize the FASB's desire to reduce the differences between SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* ("FAS 140"), and FIN 46 with regard to QSPEs that reissue beneficial interests, we believe that in many situations the additional restrictions are not warranted and the lack of clarity regarding reissuances may hinder the consistent application of the proposed rules. All of the proposed changes in the Exposure Draft add more complexity to the application of FAS 140 and the proposed effective date of the Exposure Draft is not sufficient to ensure appropriate implementation of these complex changes.

Arrangements Between a QSPE and a Transferor

The Exposure Draft proposes broad new restrictions on arrangements between a QSPE and a transferor, including derivatives and commitments to deliver additional cash or other assets, without consideration as to the size or significance of these contracts. While we understand the FASB's concern about transfers of assets that do not affect a transferor's economic position while significantly changing its financial statements, we believe that the proposed changes hold QSPEs to a higher standard than those entities

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subject to FIN 46. The FASB indicates that the Exposure Draft seeks to address the themes of risk concentration and risk dispersion that are inherent in FIN 46, however we believe that the proposed changes should be no more restrictive than the premise of FIN 46.

Derivatives and commitments to deliver cash or other assets that involve a variable interest entity (VIE) are subject to evaluation under FIN 46 to determine whether the counterparty would be the primary beneficiary of the VIE. There is no presumption that such contracts automatically cause the counterparty to absorb or receive a majority of the VIE's expected losses or residual returns. Likewise, the existence of a derivative or commitment to deliver cash or other assets between a transferor and a QSPE should not automatically disqualify the SPE without consideration as to the significance of these arrangements. We suggest that the FASB incorporate guidance in the Exposure Draft that would only prohibit transferor derivatives or commitments to deliver cash or other assets to a QSPE when those contracts absorb or receive substantially all of the risks and rewards of the transferred assets.

Equity Holdings by a QSPE

We are concerned that the broad prohibition on equity holdings by QSPEs will cause some QSPEs to fail qualifying status even when equity securities are not intentionally acquired by the QSPE. Consistent with paragraph 41 of FAS 140, we suggest that an exception to the prohibition be allowed in situations where the QSPE receives the equity securities as a result of a foreclosure or other circumstances outside of the control of the QSPE or parties associated with the QSPE. Also consistent with paragraph 41, the holding of any equity securities acquired in this way would have to be temporary only.

QSPE Requirement for Two Step Transactions

The Exposure Draft would require that a two-step transfer used to achieve legal isolation from transferred assets involve a QSPE as the second step if the result of the transfer is issuance of beneficial interests. This provision seems inconsistent with the FASB's intended purpose and could unnecessarily affect certain legitimate two-step transfers that do not utilize QSPEs, as currently permitted under FAS 140.

The FASB indicates that the purpose for this requirement stems from concerns about the potential circumvention of other provisions of the Exposure Draft that were meant to prohibit transferors and their affiliates and agents from entering into liquidity commitments, financial guarantees, and similar arrangements with QSPEs. Those other provisions in turn appear to be aimed at reducing the difference in accounting that might arise as a result of QSPEs being excluded from the scope of FIN 46. There seems to be a presumption that, if sale accounting could be achieved in a two-step transaction without using a QSPE, these other provisions could be avoided. We do not believe this to be the case. If the second SPE in a two-step transaction were not a QSPE, the providers of the contracts noted above cannot look to the QSPE scope exception in FIN 46 as a means to avoid consolidation. Instead, the provisions of FIN 46 must be applied in full.

In addition, it is unclear why the second step in a two-step transaction would have to utilize a QSPE, since a two step transaction without a QSPE is nothing more than two individual transfers that should be evaluated separately. The first transfer is a transfer among related parties and the second is to an unrelated SPE. If the related-party entity (the first transferee) has the right to sell or repledge the assets, and the third party SPE (the second transferee - not the beneficial interest holders themselves because they are not the transferee) has the right to sell or repledge the assets, both transfers would appear to meet the requirements of paragraph 9.b. of FAS 140. We agree with the FASB that if the second transferee could not sell or repledge the assets received then sales accounting could not be achieved for the second transfer. The Board seems to be prohibiting these two-step transactions that do not employ a QSPE because some enterprises may have come to an incorrect conclusion on the application of paragraph 9.b. Instead of prohibiting such transactions by requiring the second transferee to be a QSPE, we suggest that the FASB staff issue a FASB Staff Position to reaffirm that if the second transferee is not a QSPE, it must have the right to sell or repledge. If not, the transfer is not a sale.

Restrictions on QSPEs that Reissue Beneficial Interests

The FASB has explained in the Basis for Conclusions the rationale behind the proposed restrictions on certain activities related to QSPEs that reissue beneficial interests. We are concerned, however, that the restrictions may not be applied consistently as the concept of reissuance has not been defined in the Exposure Draft. Also, while we appreciate the FASB's reservations regarding decision-making by QSPEs, we believe that, in some cases, any so-called decision-making associated with reissuances is minimal and does not jeopardize the FAS 140 premise that the permitted activities of a QSPE be significantly limited and entirely specified up-front.

We suggest that the FASB specify that reissuance is the rollover of beneficial interests, that is, the issuance of new beneficial interests to pay off existing beneficial interests. In addition, we suggest that those rollovers that fall within a narrow timeframe (e.g., less than 397 days), and accordingly do not require significant discretion, be permitted without triggering the restrictions proposed in the Exposure Draft. Allowing limited rollovers without mandating restrictions on liquidity facilities and beneficial interest holdings could satisfy the FASB's requirement for limiting QSPE activities without adversely affecting the commercial paper market, which is an essential funding source in today's capital markets.

Effective Date

The Exposure Draft proposes numerous changes that add complexity to the already highly specific requirements of FAS 140. The proposed changes will require a detailed review of existing QSPEs and careful evaluation of new asset transfers and QSPEs to ensure compliance with the new requirements. We do not believe that the effective dates proposed in the Exposure Draft, which will allow less than one fiscal quarter for application, are sufficient to ensure accurate and complete implementation of the new rules. We suggest that the FASB allow constituents at least two quarters to determine the effect of the new requirements and to prepare for implementation.

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If you have any questions regarding this letter, please call me (212-602-1776) or Rita Markey (212-602-1782) or send an electronic message to: accounting.policygroup@db.com.

Very truly yours,

Peggy H. Capomaggi
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