



June 26, 2006

Financial Accounting Standards Board 401 Merritt 7 PO. Box 5116 Norwalk, CT 06856-5116

Re: FAS 140 Amendments Project

## Dear FASB Members:

The American Securitization Forum<sup>1</sup> ("ASF") is writing in connection with the FASB's (the "Board's") deliberations concerning proposed amendments to FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("Statement 140"), and in particular, regarding the Board's meeting on June 7th, at which it discussed whether and how to proceed with the proposed amendments.

ASF strongly favors the Board undertaking a joint project with the International Accounting Standards Board ("IASB") on derecognition of financial assets and related matters. With the exception of the one significant guidance and practice issue outlined below that we believe should be addressed immediately by the Board, ASF believes that, on balance, constituents' interests (including those of users, the FASB and the industry) would be better served by discontinuing the current amendments project.

We continue to believe, as set forth in more detail in our October 10, 2005 comment letter in response to the August 11<sup>th</sup> Exposure Draft of proposed amendments to Statement 140 (the "Transfers ED")<sup>2</sup>, that the proposed changes would result in inherent inconsistencies, further and unnecessarily complicate existing guidance, and are not aligned with the overall objectives of derecognition requirements. We continue to have substantial concerns with respect to many of the proposed changes. Upon consideration of the Board's discussion on June 7<sup>th</sup> and tentative decision to proceed to consider and

<sup>&</sup>lt;sup>1</sup> The American Securitization Forum (the "ASF") is a broadly-based professional forum of participants in the U.S. securitization market. Among other roles, the ASF members act as issuers, underwriters, dealers, investors, servicers and professional advisors working on securitization transactions. This comment letter was developed principally in consultation with the ASF's Accounting and Tax Subcommittee, with input from other ASF members and committees. More information about the ASF, the Accounting and Tax Subcommittee and their respective members and activities may be found at the ASF's internet website, located at <a href="https://www.americansecuritization.com">www.americansecuritization.com</a>.

<sup>&</sup>lt;sup>2</sup> <u>See</u> letter dated October 10, 2005 from the ASF to the FASB Re: Revised Exposure Draft of Proposed Amendments to FASB statement No.140 Relating to Transfers of Financial Assets (File Reference No. 1225-001)

deliberate certain proposed amendments to Statement 140, while removing others from further consideration, ASF believes that the time, effort and cost that would be required to resolve these matters within the context of a broader set of Statement 140 amendments will far outweigh any prospective benefit to preparers or users of financial statements. Instead, we urge the Board to devote its resources to develop a clearer, principles-based and more workable global accounting standards model in this vitally important area of the financial markets. We support the pursuit of a new, converged global standard, and are eager to work with both FASB and IASB to achieve it as expeditiously as possible<sup>3</sup>.

Significant time and attention have been expended by the Board and by the financial community over the past 10 years in developing, adopting, refining and interpreting accounting guidance under Statement 140 and its predecessor Statement 125. Substantial time and attention have also been devoted to developing and applying consolidation guidance under FIN 46-R. While neither of these standards may constitute an ideal long-term accounting model, they provide a current practice framework in which professional accounting analysis is being applied, and judgments reached, on a reasonably consistent basis across a wide range of securitization and structured credit market transactions. We believe that the current framework, though not necessarily ideal, is workable (with the exception noted below); more importantly, we believe that any further attempts to amend the existing standards will not necessarily result in either a more principles-based approach or in greater clarity or consistency of application, but will instead lead to new practice issues and questions regarding interpretation.

ASF therefore supports removing from the Board's agenda any further consideration of changes proposed in the Transfers ED or otherwise connected to possible changes to Statement 140, with the exception of the following issue.

## Proposed Paragraphs 35c(2) and 40

We were very surprised by the Board's decision on June 7th to delete any further consideration of the proposed revisions to paragraphs 35c(2) and 40 of Statement 140 on derivatives held by a qualifying special purpose entity ("QSPE").

While some of our members believe that there should be no limitations on the derivatives held by a QSPE, others believe that there should continue to be requirements that derivatives in a QSPE be passive, that there be a limit on their notional amount, and that the derivative has to mitigate (without excessively mitigating) some real risk that exists in

<sup>&</sup>lt;sup>3</sup> ASF, working together with the European Securitisation Forum, The Bond Market Association, the Australian Securitisation Forum and Commercial Mortgage Securities Association, has formed a joint "Global Securitization Accounting Convergence Committee" to pursue industry consensus and develop recommendations on this topic. This Committee has conducted a survey of its members' views on current securitization accounting frameworks under both U.S. GAAP and IFRS, and Committee members have met with both FASB and IASB Board members and staff to discuss the preliminary results of this survey and potential alternatives to current derecognition guidance.

Financial Accounting Standards Board June 26, 2006 Page 3

the structure. Both groups, however, do not understand the rationale that was used as a basis for deleting the proposed revisions.

At the June 7<sup>th</sup> meeting, we heard that since the Board decided to delete consideration of the initial measurement of "retained" interests, any discussion of revisions to paragraphs 35c(2) and 40 would be moot. We do not understand this rationale.

As Ms. Gibbons reported in her opening remarks, the reason for the proposed revisions to paragraphs 35c(2) and 40 was and continues to be that Statement 155 will effectively curb any potential abuse of the use of derivatives because Statement 133 will be observed either through bifurcation, or marking-to-market the *retained* security through earnings.

We understood that the initial measurement issue was intended to address just that--initial measurement of beneficial interests, not ongoing accounting. Therefore, we do not understand why dropping the issue relating to initial measurement should necessitate dropping proposed revisions to paragraphs 35c(2) and 40, which address the ongoing qualification of a QSPE.

The inability to have the derivative in a QSPE cover all of the beneficial interests, including those held by the transferor, is the most significant practice problem in connection with FAS 140, in our view. This problem is pervasive and unnecessary in light of the guidance set forth in Statement 155.

It is very common for a transferor to retain portions of one or more of the debt classes issued by a securitization entity. Administratively, it is impossible for the cap or swap in the transaction to "cover" solely the portion of the class that is held by parties other than the transferor and its affiliates or agents. This is because the securities in each class are fungible, represented by a single CUSIP, and the derivative counterparties and the transaction's calculation agents have no ability to identify the ultimate holders of the various classes. In providing their ratings for any given class, the rating agencies rely on the risk-mitigation features of a cap or swap, and cannot rate the portion held by the transferor or its affiliates differently, in comparison to how they rate the portion held by third parties.

A very significant portion of the securitization market today is conducted by securities firms who aggregate loans from several originators and then securitize them. These securities firms mark-to-market all of their securities holdings and all of their derivatives. The revisions to paragraphs 35c(2) and 40 are necessary to avoid the illogical outcome whereby an issuing trust would fail to qualify as a QSPE solely because the securities firm securitizes a pool of loans and does not immediately sell 100% of the resulting securities. The cap or swap provides legitimate risk protection to beneficial interests held both by third parties and by the securities firm; the beneficial interests held by the securities firm would be marked-to-market in their entirety, such that there should be no concern about "circumventing" Statement 133.

Financial Accounting Standards Board June 26, 2006 Page 4

For these reasons, we encourage the Board to reconsider this decision at its next meeting.

## Servicer Discretion and QSPE Status

On a separate but related matter, representatives of ASF have actively participated as members of the Resource Group for the project to clarify the nature and scope of servicer discretion that is consistent with QSPE criteria under Statement 140. While we believe it would be preferable for all Statement 140 issues to be dealt with as part of the convergence project, we understand that the Board may desire to continue to work toward resolution and clarification of certain issues identified within the scope of this project. To the extent this project moves forward separately, we request the opportunity to work with the Board and FASB staff toward that goal.

\* \* \*

Thank you for considering the foregoing comments. Should you have any questions, need additional information or desire clarification of any of the matters discussed in this letter, please contact the undersigned, or George Miller, Executive Director of ASF, at 646.637.9216.

Sincerely,

/s/ Esther Mills
Chair,
Accounting & Tax Subcommittee
American Securitization Forum

/s/ Lisa Filomia-Aktas
Deputy Chair,
Accounting & Tax Subcommittee
American Securitization Forum