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October 16, 2008

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

LETTER OF COMMENT NO. 26

RE: Proposed FSP FAS 140-e and FIN46(R)-e, *Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities*

Dear Mr. Golden:

The Accounting Standards Executive Committee (AcSEC) of the American Institute of CPAs has reviewed the proposed FASB Staff Position (FSP) No. FAS 140-e and FIN 46(R)-e, *Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities,* and is pleased to provide you with our comments. We will provide general observations on the proposal as requested by the Board and then provide specific comments on the proposed changes to the current disclosure requirements.

AcSEC agrees with the FASB's objective of providing greater transparency to financial statement users about a transferor's continuing involvement with transferred financial assets and an enterprise's involvement with variable interest entities in the period before the proposed Standards on FASB Statement No. 140 and FIN 46(R) are expected to become effective. However, as described in our specific comments below, we observe that some of the disclosure requirements are excessive and too burdensome, particularly those where the transferor has no continuing involvement and for those SPE assets and liabilities that are reflected on an entity's balance sheet. Furthermore, the proposed disclosures of future implicit arrangements are not feasible because companies cannot always predict the circumstances that would cause them to provide non-contractual support to an SPE, as discussed in our specific comments below.

AcSEC agrees with the decision to include only publicly traded companies in the scope of the proposed FSP. We observe that the exposure drafts on the proposed changes to FASB Statement No. 140 and FIN 46(R) will apply to both public and private companies and, because the disclosures required by this proposed FSP are almost identical to those exposure drafts, this will give private companies additional lead time to make any necessary changes to capture data to meet the new disclosure requirements.

We also support the aggregation provisions in the FSP for the disclosures under both FASB Statement No. 140 and FIN 46(R). This will be particularly helpful for large financial institutions with numerous involvements with securitization vehicles as well as for community banks.

AcSEC recommends that the Board consider reorganizing the disclosure requirements in the proposal to eliminate redundancy and make the FSP more user friendly. For example, the Board should consider organizing the requirements for Appendix B into applicable categories, such as sales, borrowings and servicing.

AcSEC notes that the current FASB Statement No. 140 contains examples of required disclosures and that these examples have been deleted from the proposal. AcSEC believes that these examples were useful to preparers and recommends that examples be developed to illustrate the new disclosure requirements.

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Paragraph 12 states that the FSP shall be effective for reporting periods (interim and annual) beginning with the first reporting period that ends after the FSP is issued. It is unclear to us whether the disclosures apply to all interim periods or just the first interim period after adoption of the FSP. We recommend that after the first interim period, the disclosures should be required on an annual basis only. We note that the SEC requires disclosure in interim periods when there have been material changes, which we believe is sufficient to address the need for timely information. Eliminating ongoing interim disclosures will reduce the operational and reporting burden on the impacted entities.

Companies will not have the operational ability to capture all the information required in the FSP in time for their 2008 Annual Reports. Disclosures required by the FSP for which AcSEC understands information is not collected today include disclosures for:

- Transactions where there is no continuing involvement.
- Transactions that are consolidated on an entity's balance sheet.
- A sensitivity analysis showing the hypothetical effect on the fair value of assets and liabilities that relate to continuing involvement of the transferor of two or more unfavorable variations from the expected levels of each key assumption.
- Investors that hold a significant variable interest in a QSPE (passive investors that have no other involvements with the QSPE will not have access to information needed to provide the proposed disclosures).

We believe these disclosures should be revised or eliminated from the FSP as discussed in our specific comments below.

If the FASB does not accept our recommendations regarding these disclosure requirements, we believe the effective date of the final FSP should be no earlier than the first quarter of 2009. This will give affected entities a reasonable amount of time to develop these disclosures, because some of the requested information is not currently tracked in entities' accounting or financial reporting systems. AcSEC also observes that many entities will be dealing with initial application of FAS 133-1 and FIN 45-4 as well as FASB Statement Nos. 141(R), 160 and 161 in this same timeframe and therefore, we believe providing additional time will relieve some of the implementation burden.

Following are our specific comments related to the proposed amendments to FASB Statement No. 140 and FIN 46(R):

Appendix B – FASB Statement No. 140 Disclosures

Paragraph 17 - Scope

We believe that a transferor with no continuing involvement should be scoped out of the disclosure requirements in paragraph 17. However, if it is the Board's intent to scope in transferors with no continuing involvement, then that should be clarified. The Board has established that providing information about "a transferor's continuing involvement in financial assets that it has transferred to an SPE" is one of its four objectives to be satisfied by the issuance of the FSP. Surpassing that objective, paragraph 17(h)(2) requires that an entity disclose "the characteristics of the transfer (including a description of the transferor's continuing involvement with the transferred assets, **if any**), and the gain or loss from sale of financial assets, including quantitative information about how the gain or loss was determined." If it is the Board's intent to scope in transferors with no continuing involvement, then it should consider explaining the reasons for requiring these types of disclosures in the FSP.

Paragraph 17(a) - Restricted Assets

AcSEC concurs with the Board's proposal in paragraph 17(a) to require the disclosure of "assets restricted solely to satisfy specific obligations, the carrying amount of those assets and associated liabilities..." This requirement lays the foundation for the disclosure of securitized assets in a linked presentation approach, which will enable creditors and other financial statement users to determine which assets are and which are not available to satisfy the entity's other obligations. We believe that this data is useful. Additionally, throughout the exposure draft, the FASB has used the term "financial assets" to describe the assets transferred within the scope of FASB Statement No. 140. In keeping with this convention,

the word "financial" should be inserted after the word "if" in paragraph 17(a).

Paragraph 17(f) - Anticipated Credit Losses
Most major financial services companies currently disclose their assumptions with regard to anticipated credit losses. The addition of this requirement in paragraph 17(f)(2) is in keeping with current industry disclosure best practices.

Paragraph 17(h) - Quantitative Information about Gain/Loss
FASB Statement No. 140 and the proposed amendment are clear about how to calculate the gain or loss on sale. However, it is not clear what type of information the Board expects to see as part of the paragraph 17(h)(2) requirement to disclose "quantitative information about how the gain or loss was determined." Would the following disclosure be responsive to the Board's requirement? "The company calculates its gain on sale based on the fair value of the mortgage servicing asset and the allocated carrying value of any interest-only strip receivable recognized at sale plus other proceeds in the form of cash less the allocated carrying value of the loan sold." We are not aware of any optionality associated with the calculation of gains/losses on transfers of financial assets and liabilities. As such, was it the Board's intention to request, "qualitative information about how the gain or loss was determined" rather than the quantitative information requested? As noted earlier, we believe it would be useful for the Board to provide examples of disclosure, as it did in Appendix C of FASB Statement No. 140. Financial statement preparers found this Appendix useful as a starting point for their own disclosures. AcSEC is concerned that the proposed Amendment to FASB Statement No. 140 would delete Appendix C.

Redundancy between Paragraphs 17(h) and 17(i)
There appears to be some redundancy in the request for information to be disclosed in paragraphs 17(h) and 17(i). Paragraph 17(h) focuses on entities that have:

- transferred financial assets to an SPE even if there is no continuing involvement in the transferred assets
- during any period presented, and
- accounted for the transfer as a sale.

Paragraph 17(i) focuses on additional situations and includes entities that have:

- transferred financial assets to an SPE only where there is continuing involvement in the transferred assets,
- as of the date of the latest statement of financial position, and
  accounted for the transfer as either a sale or secured borrowing.

Because most transfers to SPEs have some form of continuing involvement in the transferred assets and most transfers are accounted for as sales under current GAAP, the requirement to describe the nature of the transferor's continuing involvement in paragraph 17(h)(2) is redundant with paragraph 17(i)(2)(a). Similarly the disclosure requirements of paragraph 17(h)(3) are redundant with paragraph 17(i)(4), and paragraph 17(h)(1) is redundant with paragraph 17(i)(3).

AcSEC would propose that where there is no continuing involvement and the transfer is accounted for as a sale, there would be no disclosure requirements. Where there is continuing involvement, we would propose that the disclosures be disaggregated instead into categories as follows:

1. Where the transfer is accounted for as a secured borrowing and the assets remain on the transferor's balance sheet. There should be minimal disclosures for this category, because these items remain on the balance sheet of the transferor. Disclosure requirements, such as how the transferor's risk profile has changed as a result of the transfer or sensitivity information, are less relevant for transfers accounted for as secured borrowings. There is currently no requirement to disclose how the transferor's risk profile has changed as a result of a secured borrowing with a non-SPE. We do not believe there is sufficient justification to require these types of disclosures solely because the transferor's borrowing is with an SPE rather than a non-SPE.

2. Where there is continuing involvement and where the transfer is accounted for as a sale. We would expect the most disclosure requirements for this category. This category of disclosures could be further disaggregated into disclosures related to transfers of financial assets to an SPE that have occurred during the periods presented and disclosures related to financial assets transferred to an SPE at the date of the latest statement of financial position.

Paragraph 17(i) -

Implicit Arrangements
Paragraph 17(i)(2) calls for the disclosure of "qualitative and quantitative information about the transfer, giving consideration to both explicit and implicit arrangements..." Most financial transactions require arrangements to be explicitly articulated in the contractual agreements. Forecasting future implicit arrangements is not always feasible and, we believe, not appropriate in audited financial statements. For example, an enterprise may decide to provide financial support to a variable interest entity if the enterprise becomes exposed to significant reputational risk. However, companies cannot always predict the circumstances under which such future arrangements may be made. Moreover, auditing expectations of such future potential actions by management is generally not feasible.

Similarly, the paragraph 17(i)(2)(c) requirement to disclose the terms of any arrangements that could require the transferor to provide financial support to the transferee or its beneficial interest holders appears to require the disclosure of implicit arrangements for support. We believe this disclosure is overly broad and would require significant speculation on the part of preparers. AcSEC believes that this disclosure requirement should be limited to existing explicit arrangements and actual support given. The substance of this disclosure requirement is captured in proposed paragraph 17(i)(2)(d) and proposed paragraph 22C(c) of FIN 46(R).

Liquidity Arrangements
Paragraph 17(i)(2)(e) requires the disclosure of liquidity arrangements provided by third parties related to the transferred assets. AcSEC thinks that this requirement is only operational for the sponsor/administrator of the SPE. A transferor that is not involved in the administration of the SPE (e.g., a manufacturer transferring trade receivables to a conduit) might not know the details of the conduit's liquidity facilities even though it has continuing involvement by agreeing to make additional transfers of receivables to the conduit.

Sensitivity Analysis
The Board has requested input from financial statement preparers as to the level of effort and time needed to compile the information required in the proposed FSP. We note that the requirement in paragraph 17(i)(5) to disclose a sensitivity analysis showing the hypothetical effect on the fair value of assets and liabilities that relate to continuing involvement of the transferor of two or more unfavorable variations from the expected levels of each key assumption could be burdensome. While such data is currently collected for servicing assets and liabilities and for the value of retained interests in QSPEs, this data (and these calculations) are not collected for other transfers to SPEs. The production of this data will require preparers to make significant modifications to their existing systems during a time period when financial services companies are attempting to implement new standards such as FASB Statement Nos. 141(R), 160, and 161 and a time period of unprecedented financial constraints to fund these systems development efforts.

Appendix C – FIN 46(R) Disclosures

Expanded Disclosure Requirements for Sponsors of Variable Interest Entities
The proposed disclosures apply to a "sponsor" of an entity, even where the "sponsor" holds an insignificant variable interest. We believe that in order to ensure consistent application and interpretation of the proposed FSP, the term "sponsor" should be defined. We understand that the FASB declined to

define "sponsor," because the term is used elsewhere in the accounting literature without definition (i.e., EITF Issue 96-21), and the Board reasoned that determining whether an entity is a sponsor requires professional judgment. However, we believe that just because the term is not defined elsewhere is not a valid reason not to define it in this FSP. The scope of FIN 46(R) is far broader and has much greater implications for companies than the EITF Issue referenced. We believe that in order to properly apply the FSP, it is essential that companies have a common understanding of the characteristics of a "sponsor," as the concept has been a source of wide debate.

Paragraph 22B - Sponsors of Variable Interest Entities
Paragraph 22B(a) requires that enterprises distinguish between variable interest entities that are not consolidated because the enterprise is not the primary beneficiary, but is either the sponsor or has a significant variable interest. There may be situations where an enterprise is the sponsor of a variable interest entity, but may have no variable interest in the entity. For example, the enterprise may be an administrator of a trust and earn a fixed management fee that is not considered to be a variable interest or enter into an interest rate swap that is not a variable interest. We believe that the language in the paragraph should be consistent with the scope of the required disclosures that follow paragraph 22B. Since the disclosures are limited only to sponsors that also hold a variable interest in a VIE, we believe paragraph 22B(a) should be revised by adding "that holds a variable interest" after the word "sponsor."

Paragraph 22C –

Significant Assumptions and Judgments
Enterprises should disclose the assumptions they have used, so that financial statement users can decide whether those assumptions were reasonable in the circumstances. However, we believe that the requirement that an enterprise disclose whether a different assumption or judgment could have reasonably been made that would result in a different conclusion is not appropriate. The purpose of the audited financial statements is to fairly present the actual financial position of the enterprise, not a pro forma financial position if different assumptions were used or different judgments were made.

Implicit Arrangements
Paragraph 22C(d) requires quantitative and qualitative information about the enterprise's involvement (giving consideration to both explicit and implicit arrangements) with the variable interest entity. Forecasting future implicit arrangements is not always feasible and, we believe, not appropriate in audited financial statements. For example, an enterprise may decide to provide financial support to a variable interest entity if the enterprise becomes exposed to significant reputational risk. However, companies cannot always predict the circumstances under which such future arrangements may be made. Moreover, auditing expectations of such future potential actions by management is generally not feasible.

Paragraph 23 –

Consolidated Variable Interest Entities
AcSEC believes that the exception from the required disclosures for the primary beneficiary of a variable interest entity where the primary beneficiary also holds a majority voting interest should not be deleted from the introduction to paragraph 23. If the assets and liabilities are included in the consolidated balance sheet, enterprises already have to make disclosures about them under existing GAAP (e.g., restrictions on assets). We believe there should be fewer required disclosures for consolidated VIEs than for nonconsolidated entities. Accordingly, we believe these additional disclosures are excessive. Furthermore, in order to comply with the proposed disclosures, enterprises would have to analyze many entities that are consolidated today and first determine whether the entities are VIEs and then also determine what subset of these entities meet the definition of a business in FASB Statement No. 141(R) in order to make these disclosures. Under current practice, a VIE analysis is not always prepared for entities where the parent knows that the entity would be consolidated regardless of whether the entity is a VIE.

Fair Value Information for Consolidated Assets
The purpose of the fair value disclosure requirements in paragraph 23(d) is unclear to AcSEC. FASB Statement No. 157, *Fair Value Measurements*, and FASB Statement No. 107, *Disclosures about Fair Value of Financial Instruments*, already require many fair value disclosures. We do not believe additional disclosures are necessary for financial assets and liabilities that are consolidated through a variable interest entity. Nor do we believe such assets and liabilities should be treated any differently than other similar assets or liabilities, which are consolidated under other authoritative literature.

Paragraph 24(b) – Estimated Exposure to Loss
We believe that the FSP should encourage rather than require entities to disclose the estimated exposure to loss or range of that loss if they believe that the amount of the maximum exposure to loss is not representative of the estimated exposure to loss. The FSP should also encourage a qualitative discussion of the factors that could influence the loss estimates, recognizing that such factors are highly imprecise and could change significantly depending on market conditions.

Appendix D - Disclosures for a Nontransferor Enterprise that Holds a Significant Variable Interest in a Qualifying SPE

AcSEC believes that the disclosure requirements in Appendix D need a significant change in focus, because passive investors in QSPEs may not have the ability to obtain the required information without undue cost and effort. The disclosures would require an investor to determine whether its investment is in a QSPE, whether the SPE continues to qualify as a QSPE, and whether its interest is significant to the VIE/QSPE as well as to the investor. For example, if an investor purchases $20 million of conduit securities, he may not know whether that investment was in a QSPE and what portion of the total assets his investment represents to determine whether it is significant or not. In addition, the investor may have no knowledge of the QSPE's total assets and will likely have no ability to obtain this information. The disclosure requirements, as proposed, are not operational for passive investors in QSPEs (that is, investors who were not involved with the formation of the QSPE, do not provide servicing, liquidity, credit, or risk management facilities to the QSPE or have other continuing involvements with the QSPE). Accordingly, we believe passive investments should be scoped out of Appendix D.

We thank the Board for its consideration and would welcome the opportunity to further discuss our comments with Board members and their staff.

Very truly yours,

Jay D. Hanson
Chair, AcSEC

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Co-chairs, FAS 140 and FIN 46(R) Task Force