

March 26, 2013

Ms. Leslie Seidman Chairman Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: Transfers and Servicing (Topic 860): Effective Control for Transfers with Forward Agreements to Repurchase Assets and Accounting for Repurchase Financings (File reference # 2013-210)

Dear Ms. Seidman:

The Global Financial Institutions Accounting Committee of the Securities Industry and Financial Markets Association ("SIFMA")¹ appreciates the opportunity to provide comments on the Financial Accounting Standards Board's ("FASB's" or the "Board's") proposed Accounting Standards Update "Transfers and Servicing (Topic 860): Effective Control for Transfers with Forward Agreements to Repurchase Assets and Accounting for Repurchase Financings" (the "Proposed Update").

We understand the basis for the FASB's review of repos-to-maturity and the need to expeditiously issue the Proposed Update and we support the conclusion. That is, we agree that typical repurchase agreements and security lending agreements under a Master Repurchase Agreement or Security Lending Agreement, whether to, or prior to, maturity of the transferred asset are financings and therefore should be accounted for as such. However, we do not agree with the approach taken by the Board – promoting a rule-based exception for a specific transaction, rather than a principle-based solution relevant to a broad population of transactions. We believe the Board risks creating further practice issues involving economically similar arrangements and therefore our ideal approach would be for the Board to perform a broad reassessment of the overall derecognition model.

If the FASB decides to issue the Proposed Update in its present form, we strongly recommend additional scope clarification be included in order to ensure the Proposed Update is operational by eliminating ambiguities regarding the types of transactions covered under the derecognition and disclosure requirements. Given that the Proposed Update is an exception to the overall principle of effective control under *Transfers and Servicing* (ASC 860), we recommend that the application of this exception be precisely defined. Our recommendation would be to define the scope by referencing specific transactions.

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

Our detailed comments on the questions in the Proposed Update are included in the Appendix.

We hope you find our comments helpful. Should you have any questions or require further information concerning any of the matters discussed in this letter, please do not hesitate to contact the undersigned (212-357-8437; matthew.schroeder@gs.com).

Very truly yours,

Matthew L. Schroeder

Chair

SIFMA Global Financial Institutions Accounting Committee

Matt Schoeler

cc: Susan Cosper, Technical Director, FASB Rosemarie Sangiuolo, FASB Project Consultant Mary Kay Scucci, PhD, CPA, Managing Director, SIFMA

Appendix

Questions for All Respondents

Question 1: This proposed Update would amend the effective control guidance in paragraphs 860-10-40-5(c)(1) and 860-10-40-24 to require that transactions that involve a transfer of a financial asset with an agreement that both entitles and obligates a transferor to repurchase or redeem the transferred asset at the maturity of the transferred financial asset would maintain the transferor's effective control. Therefore, those transactions would be accounted for as a secured borrowing. Do these proposed amendments represent an improvement in financial reporting?

We understand that the Proposed Update is meant to address a practice issue for repo-to-maturity transactions. However, as stated in the introduction, we believe that the FASB should reconsider the existing derecognition model in its entirety and develop a more robust model that reflects the evolution of the repurchase agreements market in the U.S. and markets across the globe and that can also be applied to economically similar transactions executed in different forms.

We note that the Proposed Update represents a significant divergence from the current control model by changing the focus of the derecognition analysis from control to risks and rewards for a subset of transactions. Therefore, economically similar transactions could be treated differently for accounting purposes. We believe the Proposed Update is not a workable long-term solution.

Question 2: Do you agree with the limited amendment of the condition for derecognition related to effective control in paragraphs 860-10-40-5(c) and 860-10-40-24? That is, do you agree with the application of secured borrowing accounting to the transactions described in Question 1 and not to other transactions resulting in similar risks and rewards for the transferor (for example, regardless of the form of settlement or whether the settlement date of the repurchase agreement is before, on, or after the maturity date of the transferred financial assets)? If not, what approach for assessing derecognition for transactions that involve transfers of financial assets with agreements that entitle and obligate the transferor to repurchase or redeem the transferred assets would be an improvement to the proposed approach?

No. As stated above, we agree that typical repurchase agreements should be accounted for as financings. We also believe a broad reassessment of the overall derecognition model to address economically similar transactions consistently would be an ideal approach. However, we understand the practice issue the Board is attempting to address in this Proposed Update; nonetheless, we have significant operational and conceptual concerns relating to the scope.

Scope – Linked Transactions

We believe the scope set out in the proposed paragraphs 860-10-40-5(c) and 860-10-40-24 is not sufficiently clear. We are concerned that paragraph 860-10-40-24(d) can be interpreted to apply to a wide range of legal agreements or "linked transactions" (i.e., with regards to the agreement being entered into contemporaneously or in contemplation of the initial transfer) and it is unclear to us, based on the discussion in paragraphs BC 37 and BC 38 of the Proposed Update, whether this was the intention of the Board. For example, it is unclear to us whether the following transactions are in scope: a total return swap ("TRS") involving (a) an initial transfer of securities that is not within the TRS agreement and the final reverse transfer is within the TRS agreement and (b) an

agreement containing the option for physical settlement or a net cash settlement amount at the option of the transferor, transferee or both.

We note that paragraph 860-10-40-24 refers to "an agreement." If the Board's intention was to scope in only transfers and an agreement to repurchase documented in a single legal agreement rather than a set of transactions that could be "linked", then this should be clearly stated by clarifying that linked transactions are not in scope and for clarity's sake, refer only to specific types of transactions such as repurchase agreements under a Master Repo Agreement or an equivalent legal agreement.

Scope - Cash-Settled Repurchase Agreements

We believe the exception to the de-recognition guidance in ASC 860 for repo-to-maturity transactions should be made consistently for all typical repurchase agreements irrespective of terms of settlement. If the purpose of the Proposed Update is to eliminate the practice issue that arose in having different accounting for repurchase agreements based on settlement terms, e.g., a repo-to-maturity transaction (which is typically settled in a net cash movement) and a repurchase transaction where the financial asset is returned in an exchange, the scope of the Proposed Update does not fully meet that objective, as it still allows for exceptions for cash-settled repurchase transactions prior to maturity. We believe that this distinction may lead to confusion among readers of the financial statements as well as be more costly to monitor as compared to solely accounting for all typical repurchase transactions as financings. As such, we suggest that the effective control test should be amended such that it is consistently applied for all cash-settled and physically-settled repurchase agreements regardless if the transaction is settled before, on, or after the maturity date.

Question 3: This proposed Update would require that an initial transfer and a repurchase agreement that relates to a previously transferred financial asset between the same counterparties that is entered into contemporaneously with, or in contemplation of, the initial transfer (a repurchase financing) be accounted for separately. Would separate accounting for the initial transfer and repurchase financing reflect the economics of those agreements? Do these proposed amendments represent an improvement in financial reporting?

The proposed approach is preferred as it is more consistent with the stated objectives of the Board in accounting for repurchase transactions.

Substantially the Same

Question 4: The Board affirmed that, consistent with existing guidance, effective control would be maintained by a transferor if the transferee returns a financial asset that is —substantially the same as the initially transferred financial asset. Should the return of financial assets that are substantially the same maintain the transferor's effective control over transferred financial assets? Why or why not?

Yes. We agree that the return of substantially-the-same financial assets should maintain the transferor's effective control over the transferred financial asset when the transferor is indifferent between repurchasing the initially transferred assets and repurchasing the substantially-the-same asset because the transferor remains in the same economic position with either financial asset.

Question 5: The Board decided that the characteristics that must be satisfied for a financial asset to be substantially the same in paragraph 860-10-40-24A should result in identifying those transactions in which a transferor is in economically the equivalent position with the return of a substantially-the-same asset compared with the return of the identical asset. Do the proposed amendments to the substantially-the-same characteristics help clarify how those characteristics should be applied? If not, what additional clarifications are needed? Does the implementation guidance related to the substantially-the-same characteristics in paragraph 860-10-55-35 provide appropriate clarifications related to the characteristics and their application? Is the implementation guidance

operable? If not, what additional guidance is needed?

We understand the FASB's development of detailed implementation guidance was an attempt to provide additional clarification on determining what assets are substantially the same. However, we don't believe the examples are helpful or necessary, as the amendments were already captured within the existing concept of substantially-the-same (via measurement of the yield). Further, we don't agree that the examples in the implementation guidance should be a required approach as an alternative to preparers using judgment in applying a stated principle.

Disclosures

Question 6: The Board decided that for transfers with agreements that both entitle and obligate the transferor to repurchase transferred financial assets that maintain a transferor's effective control and are accounted for as secured borrowings, the transferor should disclose the gross amount of the total borrowing disaggregated on the basis of the class of financial assets pledged as collateral. Would this proposed disclosure provide decision-useful information? If not, what disclosures, if any, about these transactions should be required and why?

Although this question is directed at users, we believe that the Board would benefit from understanding the preparers' perspective as well. If the Board intends to consider a broad reassessment of the overall derecognition model, then asking for additional disclosure at this stage seems preliminary. We recommend that changes to disclosure be considered as part of the broader reassessment.

We are also concerned that this proposed disclosure of collateral classes indirectly incorporates the proposed guidance from the exposure draft "Accounting for Financial Instruments: Liquidity and Interest Rate Disclosures." As the Board is aware, commenters on that exposure draft were concerned about the appropriate framework for liquidity and interest rate disclosures and potential duplication of efforts. We believe that it is premature to include a liquidity-related disclosure through the Proposed Update prior to revisiting the liquidity disclosure framework. In addition, information about the liquidity of the underlying collateral is already provided by the requirement to categorize transactions accounted for as secured borrowings in the fair value hierarchy, whether reported at fair value or not. Considering collateral liquidity is a key determinant in deciding the hierarchy categorization.

However, if the Board proceeds with requiring such a disclosure, we have questions around implementation. We would like the Board to confirm that this disclosure would only be required prospectively, beginning with the period of adoption, and that comparative disclosures would not be required.

In addition, we would like to reiterate that the question of scope discussed elsewhere in this letter would apply here, too. Specifically, as it relates to this proposed disclosure, it is unclear to us whether the scope of the disclosure is for all secured financing, resulting from failure to meet any of the criteria for derecognition or specific to just failure to meet the effective control criterion.

Question 7: The Board decided that for transfers with agreements that both entitle and obligate a transferor to repurchase transferred financial assets that are accounted for as sales and forward repurchase agreements solely because the asset to be reacquired is not substantially the same as the initially transferred asset, the transferor should disclose the carrying amount of assets derecognized during the reporting period. Would this proposed disclosure provide decisionuseful information? If so, should the scope of this proposed disclosure requirement be expanded to explicitly include all transfers of financial assets with agreements to repurchase the transferred assets that are accounted for as sale transactions? What additional information about those transactions, if any, should be disclosed?

No. We would not support the disclosure proposed in paragraph 860-30-50-3b. This disclosure appears to be focused primarily on dollar roll transactions with an initial transfer of specified mortgage pools (an initial transfer of a TBA is not in scope of the derecognition guidance). However, the scope of the proposed disclosure, as currently worded, is extremely broad, and could potentially require disclosure of transactions for which no question exists that the "substantially the same" criteria are met. Many of the substantially-the-same criteria require no judgment: e.g., the coupon and the form and type of the pool must be identical and the guarantor must be the same. Consider the example of two unrelated transactions with the same counterparty involving a 30 year FNMA 3.5 specified pools sale and a 30 year GNMA 3.5 TBA purchase for settlement the following month, which could fall within scope simply because such transactions rather obviously fail the substantially-the-same test. Given such a broad scope, every financial asset transfer could theoretically be in scope for this disclosure, since each financial asset sold on a single trading day differs from some other financial asset agreed on that day to be repurchased from the same counterparty in the future. However, even if the scope could be successfully narrowed to capture solely transactions for which the "substantially the same" test is useful in determining the proper recognition, the disclosure is unsupportable on both operational and conceptual grounds.

Operationally, the disclosure is not compatible with how mortgage-backed-securities transactions are settled on the main US clearinghouse. In the settlement procedures of the Mortgage Backed Securities Division of the Fixed Income Clearing Corporation, open TBA buys and sells for the same issuer, coupon and maturity are paired off and netted to a single open position per clearing member per MBS security type. Therefore, it is generally not known at inception of transactions undertaken for market-making purposes whether the settlement of such transactions will result in delivery of an existing security position or be paired off against an offsetting position. Indeed, delivery may not be contemplated or intended at the inception of certain TBA trading activity, including TBA sells and buys used to roll forward an outstanding exposure to the next settlement month. Since no linkage exists between an existing security position and a TBA sell/concurrent TBA buy at a future date at the inception of many TBA transactions conducted for market-making purposes, the disclosure cannot be produced by current system capabilities. In addition, since the disclosure would have such a disconnect to the actual business activity being conducted, we fail to understand how the disclosure could be considered useful to users of financial statements.

Conceptually, we do not understand the basis for the disclosure. As the Board notes in paragraph BC49 of the Proposed Update, accounting judgments are required in many other circumstances with no related disclosure requirements of the basis for the judgment. However, in the absence of a stated basis for the disclosure, the fact that accounting judgment is required seems to be the only discernable reason for its existence.

Finally, we do not understand why the disclosure would include all sales and repurchases executed during the period, rather than solely those with repurchase obligations outstanding at the end of the reporting period. Once the repurchase obligation has settled, the accounting for the repurchased security on the balance sheet would seem to be clearly transparent to users of financial statements and not in need of further discussion in the notes to the financial statements.

Questions for Preparers and Auditors

Question 8: Do you foresee any significant operability or auditing issues in complying with the proposed disclosures?

As discussed elsewhere in our comment letter, we believe there are significant operational issues with the Proposed Update in connection with the scope and the disclosure requirements.

Transition and Effective Date

Question 9: Do you agree with the transition provisions in this proposed Update? If not, why?

No. We believe the guidance should be applied prospectively to all transactions consistent with prior de-recognition related amendments. Examples of these past de-recognition-related changes in accounting principles include FAS 125, FAS 140, FAS 166, and FSP FAS 140-3.

If retrospective application is retained then our understanding is that the resulting change to the current accounting treatment will give rise to an election date for the fair value option in accordance with ASC 825-10-25-4. However, as this is not explicit in the Proposed Update, we ask the Board to clarify this point in the final standard.

Question 10: Should early adoption be permitted? If not, why? Should this be the case for both public entities and nonpublic entities?

We do not believe early adoption is necessary if the Board goes forward with this Proposed Update with the amendments suggested by SIMFA and the time between the publication date and the effective date is relatively short.