October 7, 2005

Financial Accounting Standards Board
401 Merritt 7
F0 Box 5116
Norwalk, CT 06856-5116

Re: Revised Exposure Draft of Proposed Amendments to FASB Statement No. 140 Relating to Transfers of Financial Assets (File Reference No. 1225-001)

Ladies and Gentlemen:

Canadian Imperial Bank of Commerce ("CIBC") is writing to comment on the exposure draft referenced above, which we refer to below as the “exposure draft.” CIBC appreciates the opportunity to comment on the above referenced exposure draft. CIBC recognizes FASB’s continued efforts to provide clarification and guidance to derecognize finance assets.

CIBC is a leading North American financial institution, interlisted on the Toronto Stock Exchange and the New York Stock Exchange. Consequently, CIBC is required to comply with both Canadian and the U.S. generally accepted accounting principles. Both Canadian and U.S. GAAP are harmonized with respect to transfer of receivables as the Canadian Accounting Standards Board (AcSB) issued Accounting Guideline (AcG) – 12 pursuant to the finalization of FASB Statement No. 140. AcSB has announced its intention to amend AcG-12 pursuant to the finalization of amendments to FAS 140. Consequently, we wish to bring to the Board’s attention certain structures that are potentially adversely impacted by the proposed amendments, which we believe are unintended consequences.

Structure 1 – Securitization of credit card receivables

A typical credit card receivable revolving structure in the Canadian marketplace is illustrated in Appendix 1.

Facts:

1. The QSPE is established for the purpose of purchasing interests in credit card receivables generated by the Seller.
2. The purchase is funded through the issuance of Notes pursuant to the terms of a trust indenture.

3. The Seller will sell Ownership Interest (which consists of undivided co-ownership interest in and to the Account Assets) to the Co-Owner (i.e. the QSPE).

4. The relationship among the QSPE and the Seller is governed, in part, by the pooling and servicing agreement between the Seller and the Custodian, pursuant to which the Custodian has agreed to hold the Account Assets as agent and bailee for the benefit of the Seller and the Co-Owner.

5. The Pooling and Servicing Agreement also sets out the responsibilities of the entity (the Servicer), which services the Accounts and the related Account Assets.

6. Paragraph 9(a) is satisfied in that a true sale opinion is obtained for the Co-Ownership interest transferred to the QSPE, taking into account all factors required under all relevant portions of FAS 140, including paragraphs 9(d) and 9(e).

7. Paragraph 9(b) criteria is also met as the beneficial interest holders in the QSPE have the right to pledge or exchange their beneficial interests, and no constraint exists that provides more than trivial benefit to the transferor.

8. No arrangements exist that violate paragraph 9(c).

Analysis under the exposure draft: The exposure draft would require the application of Paragraph 8A to the above structure. The Co-Ownership transferred may be interpreted to not meet the criteria for participating interest because:

1. The QSPE basically receives enough cash to meet its obligation under the Notes issued i.e. losses, if any, incurred are borne by the transferor

2. During the Accumulation /Amortization period, the cash flow received from the obligors may not be distributed pari-passu, as the QSPE may continue to receive the cash based on its original share (without taking into account the assets going back to the transferor during the accumulation period);

3. There are normal representations and warranties provided by the transferor in relation to the transfer, which may be in violation of paragraph 8Ac.

4. The percentage ownership of the QSPE may fluctuate as a result of fluctuation in the total pool balance held by the custodian.

Consequently, under the exposure draft this would mean that the entire financial asset (i.e. the pool under the Custodian), be transferred to a QSPE.

We believe the amendments proposed in paragraph 8A are without a proper basis and do not further the objectives of FAS 140. If FASB's interpretation is that the transfer would
not meet the definition of a participating interest and hence would require transfer of the entire financial asset to a QSPE, we disagree with and oppose the proposed amendments contained in Paragraph 8A for the following reasons:

1. We believe the proposed amendments are contrary to the Board's stated objectives. The Board in concluding under FAS 140 stated "...that an objective in accounting for transfers of financial assets is for each entity that is a party to the transaction to recognize only assets it controls and liabilities it has incurred, to **derecognize** assets only when control has been surrendered, and to derecognize liabilities only when they have been extinguished. Sales and other transfers frequently result in a disaggregation of financial assets and liabilities into components, which become separate assets and liabilities. For example, if an entity sells a portion of a financial asset it owns, the portion retained becomes an asset separate from the portion sold and from the assets obtained in exchange.\" [Emphasis added].

2. We believe that control has been surrendered and this should be the focus. The summary section of FAS 140 states "This Statement provides accounting and reporting standards for transfers and servicing of financial assets and extinguishments of liabilities. Those standards are based on consistent application of a **financial-components approach** that focuses on control.\" [Emphasis added].

3. In this structure, legal opinion is being obtained that confirms that the Co-Ownership portion is isolated. A13 of the exposure draft states that "The Board also considered the issue of setoff rights before reaching its conclusion that the isolation requirement should be based on legal analyses..." 

Structure 2 – Securitization of Commercial Mortgages

A typical securitization of commercial mortgages structure in the Canadian marketplace is illustrated in Appendix II.

**Facts:**

1. Commercial mortgages are pooled and transferred to an Entity (a Trust or a Corporation); the Seller transfers 100% interest in the pool and consequently, does not retain any interest; the Seller continues to service the mortgages.

2. The Entity immediately issues ownership certificates in the Mortgage pool to investors; these certificates could be issued in Senior- and Subordinated- form;

3. The certificates issued have prepayable feature in them to match any prepayments on the mortgages.

4. Paragraph 9(a) is satisfied in that a true sale opinion is obtained for the mortgage pool that is transferred to the Entity, taking into account all factors required under all relevant portions of FAS 140, including paragraphs 9(d).
5. Paragraph 9(b) criteria is also met as the Entity has the right to pledge or exchange the transferred mortgage pool, and no constraint exists that provides more than trivial benefit to the transferor. This is moot since the Entity is pre-programmed to issue the ownership interests via the issue of the certificates.

6. No arrangements exist that violate paragraph 9(c).

Analysis under the exposure draft: The exposure draft would require the application of Paragraph 8A to the above structure. The ownership certificates issued by the Entity would be required to meet the criteria for participation interests in paragraph 8A. It may be interpreted to not meet the criteria for participating interest because:

1. The ownership certificates issued do not share, pari-passu, the cash flow from the mortgages pool.

2. There are normal representations and warranties provided by the Seller in relation to the transfer, which may be in violation of paragraph 8Ac.

Consequently, under the exposure draft this would mean that the Entity would have to be set up as a QSPE in order for the Seller to get a sale treatment, although the Seller is not retaining any ownership interest in the assets.

It appears counter-intuitive that we would be applying the participating interest criteria to instances where the Seller does not retain an ownership interest. We oppose the proposed amendments for the reasons detailed under Structure 1 above.

Other considerations

We believe that FASB should review the sequence of events leading to the issuing of the exposure draft. The initial reasons for the amendment project were primarily to:

1. Reduce the confusion in practice as to the ability of the QSPEs to issue short-term liabilities to fund longer term assets; and

2. Resolve the issue of setoff rights for isolation of transferred financial assets.

FASB has proposed amendments to FAS 140 to address 1. above and has concluded that the existence of setoff rights are no longer an issue since it is not considered by a court in the assessment of whether a transaction would be deemed to be a true sale.

The concept of participation interests is more applicable to loan participation arrangements. Consequently, we believe that paragraph 8A, if not removed, should be restricted to such arrangements.

Based on the above structures and the reasons detailed, we strongly agree with and support the position taken by the disagreeing Board members in the following paragraphs:
1. Paragraph A49: We disagree with the requirement under the proposed amendments for the use of a QSPE to achieve sale accounting for transfers of portions of financial assets that do not involve a pro rata division of cash flows. In addition, we agree that the Board has not demonstrated that the benefits of the proposed amendments outweigh the costs.

2. Paragraph A51: There is an expectation in FAS 140 that an entity would use an SPE (including a QSPE) when a transferor and its legal advisors conclude that that step is necessary to achieve isolation. However, it is inappropriate to amend FAS 140 to impose that step for simple disproportionate transfers of portions of financial assets when an entity and its legal advisors have concluded that it is not necessary to achieve legal isolation under applicable law.

3. Paragraph A52: The mere insertion of a legal entity does not change the substance of the arrangement or serve any valid business purpose (compared with a well-executed sale agreement) and should not have significance from an accounting standpoint.

4. Paragraph A53: The work on the issues involving partial sales should be preferably deferred until the Board undertakes a more fundamental review of the financial-components approach as part of a joint project on derecognition with the IASB.

CIBC appreciates the opportunity to provide the foregoing comments. Should you desire any clarification or have any questions concerning the matters addressed in this letter, please do not hesitate to contact us.

Very truly yours,

Francesca Shaw
SVP & Chief Accountant
APPENDIX I

TYPICAL CANADIAN CREDIT CARD RECEIVABLE STRUCTURE

Credit Card Obligors

Customer Purchases / Advances

Soller

Receivables

Retained Interest

Purchase Price of Ownership Interest

Account Assets held by the custodian

Ownership Interest

QSPE

Note Proceeds

Investors

Interest and Principal
Commercial Mortgage Obligors

Mortgage receivable

Seller

Purchase Price

100% Mortgage receivable

Entity (Trust / Corporation)

Senior notes (60% ownership interest) issued to investors

Subordinated notes (40% ownership interest) issued to investors