October 10, 2005

UBS appreciates the opportunity to comment on the revised Exposure Draft of proposed amendments to FASB Statement No. 140 relating to the Accounting for Transfers of Financial Assets (the “Exposure Draft”). We are keenly interested in any developments relating to the accounting for transfers of financial assets and support the Board’s initiative to clarify or revise the derecognition requirements for financial assets and the initial measurement of interests related to transferred financial assets held by a transferor. UBS is separately commenting on the proposed amendments to FASB Statements No. 133 and 140 relating to the accounting for certain hybrid financial instruments. We hope you find our comments useful.

Unless otherwise indicated, all paragraph references refer to paragraphs of Appendix C to the Exposure Draft.

Initial measurement of retained interests

We support the proposed amendment that a transferor’s beneficial interest be initially measured at fair value. We agree that beneficial interests received in return for transferred assets are new assets to the transferor. However, we seek clarification regarding the initial
recognition of interests received from a non-qualifying SPE in return for transferred assets. Since the proposed change to the definition of "beneficial interests" excludes interests in non-qualifying SPEs, it is unclear whether a retained interest in a non-qualifying SPE should be considered a new asset, similar to a retained interest in a qualifying SPE, or a participating interest, or neither.

We believe that a retained interest in a non-qualifying SPE should be considered a new asset, assuming the transferor does not consolidate the SPE. As explained in paragraphs A37 to A41 of the Basis for Conclusions, the Board based its decision to require initial fair value measurement of a retained beneficial interest on the fact that, when using a qualifying SPE, a transferor has surrendered control. A transferor retaining an interest in a non-consolidated non-qualifying SPE has also surrendered control. As a result, we believe that a retained interest should initially be measured at fair value even if it is not issued by a qualifying SPE, as long as the transferor has surrendered control over the transferred asset.

**Sale of a portion of a financial asset**

The Exposure Draft specifies that a portion of a financial asset can only be accounted for as a sale if it meets the definition of a participating interest or if it is transferred to a qualifying SPE. We understand that the Board has restrictively defined "participations" due to its uncertainty over the sufficiency of legal opinions to ensure legal isolation is achieved.

FASB statement No. 140 is inherently founded on the concepts of legal isolation and the components approach. In our view, reliance on the legal isolation opinions of counsel should not be selectively applied.

Further, we believe that the amended paragraph 8A would result in outcomes inconsistent with the fundamental concept of a components approach. Paragraph 141.a. of FASB statement No. 140 states that the components approach is designed to "be consistent with the way participants in the financial markets deal with financial assets." As further discussed in paragraph 146.a, "the economic benefits provided by a financial asset... are derived from the contractual provisions that underlie that asset." In the financial markets, it is common for a single asset to be composed of multiple elements that are as easily decomposed as aggregated.

We are concerned with the potentially idiosyncratic outcomes that may develop in applying paragraph 8A by virtue of its artificial limitations on the components approach. For instance, it is our understanding that a straightforward interest-only strip would not meet condition b., thereby causing the transferor to continue to recognize it although the associated contractual flows had been legally transferred. Such representation would be inconsistent with the economic workings of the marketplace.

According to paragraph A24 of the Basis for Conclusions, the Board believes this proposed guidance will (a) improve comparability in reporting similar transactions, (b) reduce the opportunity for abusive structures and (c) resolve concerns that a transferor has retained control over derecognized portions of financial assets. We do not think that the Board has
sufficiently substantiated that the benefits of such a narrow definition of a participating interest, as proposed in paragraph 8A of the Exposure Draft, outweighs the costs of increased use of qualifying SPEs even though the conditions in paragraph 9 can be met without such SPE. We therefore suggest that the proposed paragraph 8A is deleted in its entirety and that the financial components approach is continued. If the Board retains the proposed definition of a participating interest, we request that the Basis for Conclusions describe how the definition was developed.

Changes in qualifying SPE conditions

Passive derivative instruments

We support the proposed amendments to paragraphs 35(c)(2) and 40(a) of the Exposure Draft allowing a qualifying SPE to enter into passive derivatives that pertain to all issued beneficial interest. The Exposure Draft of proposed Statement of Accounting Standards - Accounting for Certain Hybrid Financial Instruments - an amendment of FASB Statements No. 133 and 140 proposes an additional amendment to paragraph 35(c)(2) allowing a passive derivative instrument not only to pertain to beneficial interests but also to issued derivative financial instruments. The changes proposed in the hybrids exposure draft become effective on January 1, 2006, if issued in the first quarter of 2006. On the other hand, the amendments proposed in the Exposure Draft become effective July 1, 2006, if the Exposure Draft is issued in the first quarter of 2006. We believe the amendments to paragraph 35(c)(2), proposed by both exposure drafts, should be effective on the same date. Since the amendments are only valid for new transactions, we do not foresee a problem with applying them as soon as possible and, therefore, suggest providing an effective date for the proposed changes to paragraph 35(c) in the Exposure Draft consistent with the hybrids exposure draft.

Re-securitizations

The proposed changes to paragraphs 35(c)(5) and 41 of the Exposure Draft state that a qualifying SPE is generally prohibited from holding equity investments unless they are obtained in connection with the collection of financial assets that it holds. We do not have a fundamental objection to this amendment and we support the clarification that equity interests can be held temporarily if it is obtained in connection with the collection of financial assets held by a qualifying SPE. However, it is unclear whether the Board intended to prohibit a qualifying SPE performing re-securitizations such as “Net Interest Margin (NIM)” re-securitizations. We understand based on paragraph A27 of the Basis to Conclusions, that it was the intention of the Board to ensure that a qualifying SPE only hold investments that are passive in nature. We do not see that re-securitizations would require a qualifying SPE to become active and therefore are of the opinion that a qualifying SPE should be allowed to do NIM securitizations, even though such tranches might be considered equity under FASB Statement No. 115. We suggest that paragraph 41 be amended to specifically exclude certificates issued by a qualifying SPE from the scope of equity instruments that an SPE is not allowed to hold, clarifying that a standard NIM securitization is still possible under the proposed amendments.
Legal isolation requirements

Consolidated affiliates or agents

Paragraph 9 defines legal isolation requirements and has been changed in the Exposure Draft to include "consolidated affiliate(s) of the transferor" when assessing the legal isolation of the transferred assets from the transferor. We believe the Board intended to clarify that a legal isolation analysis should include the transferor and any of the entities that are consolidated by the transferor and therefore could legally be regarded as one single entity. We agree that a legal isolation analysis should include the entities consolidated into the transferor and we understand that this is in line with the intention of the Board since all the text amendments state "transferor and its consolidated affiliates". However, we question how to apply these requirements if the transferor is a subsidiary company. We request the Board clarify whether true sale opinions should include the parent company of the transferor or any affiliated companies not consolidated into the transferor.

Arrangements not contemplated at time of transfer

Paragraph 9(d) of the Exposure Draft requires an isolation analysis to consider any arrangement made in connection with a transfer even if it was not entered into at the time of the transfer. Additionally, paragraph 9(e) requires that, if the transferee is a qualifying SPE, all arrangements between a transferor, its consolidated affiliates or agents and the holders of beneficial interests must be considered in the legal isolation analysis as if such arrangements would have been made with the SPE directly. Combined with paragraph 9(d), such arrangements would have to be considered even if they were not made at inception of the transaction. We believe that an isolation analysis should cover any arrangement entered into after inception of the transaction only if it were contemplated at inception of the transaction. We do not understand how a legal isolation analysis made at a specific point in time could possibly consider all future transactions. We believe future arrangements, if not contemplated at the time of the transfer, should be analyzed when they occur as potentially resulting in the transferor regaining control of the transferred assets, consistent with paragraph 55 of FASB Statement No. 140.

True sale opinions

We agree that a legal opinion is not required if a transferor has a reasonable basis to conclude that the appropriate legal opinion would be given if requested, as described in paragraph 27B. We believe this guidance will be helpful when repeating securitizations with the same facts and circumstances under the same jurisdiction.

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We hope you find our comments useful. If you would like to discuss any comments that we have made, please do not hesitate to contact John Gallagher at 203-719-4212 or Sam Lynn 203-719-7774
Regards,

UBS AG

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