October 28, 2005

Mr. Lawrence Smith
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Subject: Comment Letter on Proposed Statements of Financial Accounting Standards

File References:

- 1225-001 Exposure Draft, Accounting for Transfers of Financial Assets, an amendment to FASB Statement No. 140 (Transfers of Financial Assets ED)
- 1210-001 Exposure Draft, Accounting for Certain Hybrid Financial Instruments, an amendment of FASB Statements No. 133 and 140 (Hybrids ED)
- 1220-001 Exposure Draft, Accounting for Servicing of Financial Assets, an amendment to FASB Statement No. 140 (Servicing ED)

Dear Technical Director:

Wachovia Corporation is pleased to have the opportunity to comment to the Financial Accounting Standards Board (the Board) on the above referenced exposure drafts. We support the Board's efforts to improve existing accounting guidance, especially when such actions simplify complex areas of accounting, align guidance to reflect the economic substance of transactions, encourage consistency of application across the user community and improve financial statement comparability.

We support the issuance of both the Hybrids ED and the Servicing ED with certain minor modifications as discussed below. We believe both the Hybrids ED and the Servicing
ED will significantly reduce the complexity of the existing accounting models for these instruments, better align the accounting treatment of hybrid instruments and servicing rights with various economic risk mitigation strategies, and improve the overall transparency and understandability of financial statements. Further we support the amendments to paragraphs 35c and 40 of SFAS No. 140 that are included in the Transfers of Financial Assets ED and recommend that they be moved into the Hybrids ED.

We do not support the issuance of the Transfers of Financial Assets ED at this time because we believe it would increase the complexity of an already overly complex rules-based accounting model and increase the potential for inconsistent application and lack of comparability across the user community. We do not believe the proposal is a conceptual or practical improvement to existing guidance. We believe many of the proposals in the Transfers of Financial Assets ED will either:

- Not be able to be implemented without significant further guidance.
- Require different accounting for many common transactions that do not appear to be controversial or subject to abuse under existing guidance, or
- Produce accounting results that are inconsistent with the economics of the underlying transaction.

We believe the cost to implement the Transfers of Financial Assets ED would be substantial, and would exceed any tangible benefit from reduced abuses or problems in financial reporting. The Board has not made clear in the basis of conclusion the financial reporting abuses or problems in current practice that warrant these amendments. Accordingly, it is equally unclear how certain of the solutions proposed in the ED would address these abuses and problems.

Instead we would strongly support efforts to reach a permanent solution for securitization accounting under the financial components approach set forth in
paragraph 5 of SFAS No. 140. Any permanent solution should be principles-based, simplify existing guidance, be reflective of advancements in the securitization market and address convergence with IAS No. 39. We believe the Board should pay closer attention to the cost-benefit equation for this (and all) proposed standard, and should better articulate the results of this analysis as a part of the basis of conclusion. The Board should also attempt to anticipate obvious instances where the lack of clear guidance or definition will create friction between the user community and auditors, and to the extent possible, include clarifying language to avoid confusion and the potential resulting diversity in application.

In summary, we support the timely issuance of the Servicing ED and the Hybrids ED (modified to include the changes to paragraphs 35 and 40 of SFAS No. 140), but do not support the issuance of the Transfers of Financial Assets ED. We believe the Board should direct their efforts to developing a permanent solution for securitization accounting and should not focus on additional incremental measures to address specific perceived abuses.

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The following summarizes our detailed thoughts and concerns on the proposed Exposure Drafts.

I. Transfers of Financial Assets ED:

Paragraph 8A – Transfer of a Portion of a Financial Asset / Loan Participations

The proposed accounting for transfers of a portion of a financial asset appears to be the Board’s attempt to apply a rules-based solution to a problem (abusive structures, diversity in practice) that does not exist in a practical sense. We believe the proposed solution is not aligned with the financial components approach articulated in paragraph 5 of SFAS No. 140 because certain transfers of financial assets where presumably control is also transferred would be accounted for as secured borrowings. Also, it appears to us that use of a QSPE is not required to achieve derecognition when transferring an entire financial asset when a non pro-rated interest is retained by the transferor if the requirements of paragraph 9 are satisfied. Further, we believe the definition of “recourse” has a drafting error as it inappropriately includes standard representations and warranties that do not provide a form of credit recourse.

The proposed accounting would significantly impact the structure of many commonly occurring transactions in the marketplace, including loan participations, senior/subordinated commercial mortgage-backed securities transactions, certain collateralized debt obligations and mortgage-backed securities programs. The development of the existing structures for these types of transactions has required significant investment of time and resources across the financial services industry. These structures are market tested, well understood by investors and have been thoroughly examined by auditors and regulators. The Board has not articulated in the basis of conclusion, nor are we aware of any widespread significant abuses of these structures in the marketplace. Forcing users to create new structures for these types of products using “qualifying”
special purpose entities (QSPEs) will not change their basic economics (other than to make them more costly to execute), will require significant incremental investment of time and resources and most likely will not change or improve financial reporting. Further, we believe the definition of a participation interest will require additional interpretive guidance.

**Paragraph 9A – Isolation**

The proposed changes to paragraph 9A that require agreements or arrangements of a transferor’s consolidated affiliates be imputed to the transferor for purposes of the legal isolation test are inconsistent with legal standards. Proposed paragraphs 9D and 9E create yet additional requirements currently not included in the legal assessment of isolation. We do not understand the Board’s intention to create an isolation standard for accounting purposes that goes far beyond the legal standard, nor do we believe it is necessary. We believe the current requirements of paragraph 9 provide reasonable assurance that the transferred financial assets are beyond the reach of creditors or other receivers in the case of bankruptcy. We are not aware of situations where actual claims in bankruptcy differed from attorney’s conclusions in “True-Sale” and “Substantive Non-Consolidation” opinions. We also believe the proposed guidance could lead to untenable requirements by auditors to obtain multiple legal opinions to execute basic asset transfers.

**Paragraph 9b – Transferability Requirements**

The proposed transferability requirements in paragraph 9b would result in almost all multi-step securitization transactions being accounted for as secured borrowings. The basis of conclusion is silent as to the rationale for this new requirement. Multi-step transactions isolate transferred financial assets beyond the reach of the transferor and its creditors in bankruptcy. The ultimate transferee in a multi-step transaction can sell or
pledge the assets or beneficial interest. Accordingly, we fail to understand the logic supporting this proposed change.

The proposed transferability requirements also extend the transferability requirements of paragraph 9b to beneficial interests retained by the transferor. In certain transactions, the transferor plays two roles: transferor and transferee. Often, transferors that retain beneficial interests are constrained from transferring that interest due to tax rules, regulators or rating agency concerns. This new guidance creates a “Catch-22” situation in that an entity in its role as transferor has given up control of the financial asset, but in its role as transferee is constrained from transferring its beneficial interest. Going back to the financial components approach that underlies SFAS No. 140, we believe a principles-based analysis of these two conflicting positions would lead to the conclusion that an entity’s role as transferor is the determinant relationship since the entity is giving up control of the underlying financial asset, and therefore should be able to derecognize these assets. The entity’s position as transferee and the related restraints on transfer do not substantially impact the control analysis, and therefore should be a subordinate factor in the analysis.

**Rollover of Beneficial Interest**

We believe the Board’s intent is to prevent transferors from effectively retaining control over assets by having the ability to disproportionately benefit from the reissuance of liabilities of a QSPE. The proposal requires QSPEs that roll-over their beneficial interest to have no party with a combination of involvements that gives the single party the ability to obtain a more-than-trivial benefit as compared to the sum of the benefits that could be obtained by hypothetical third parties. We are unclear what is meant by a “more-than-trivial benefit”. For example, if such involvements are at arm’s-length and at market rates, can this constitute a more-than trivial benefit? We believe further clarification of the meaning of this phrase is necessary to avoid diversity in
application of this principle and the creation of numerous practice issues. An approach that limits the QSPE's decision-making abilities for liabilities similar to the limitations on the decision-making abilities for assets may be a more consistent and practical solution for the effective control issue in roll-over structures.

**Paragraph 11d – Initial FV Measurement**

The Transfers of Financial Assets ED requires assets transferred to a QSPE or a VIE but not sold to third parties be measured at fair value with a resulting gain or loss recognized on the entire transferred balance, including any transferor's beneficial interest. We generally support efforts to move toward a fair value accounting model, however, we are concerned that this proposal will provide opportunities for earnings management related to unrealized gains embedded in retained positions. Accelerated issuance and adoption of the fair value option may alleviate our concerns as presumably the assets to be transferred would already be marked to fair value prior to and up to the time of transfer.

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II. Hybrids ED

We support the issuance of the Hybrids ED on a timely basis because it will simplify current accounting for hybrid instruments, align the accounting treatment for hybrid instruments with the accounting for assets and liabilities used in corresponding risk mitigations strategies and improve overall financial reporting. We also encourage the timely issuance of the Fair Value Option Standard, which we believe will have similar benefits on a broader scale.

Issue 1: Do you support the Board's decision to permit fair value remeasurements for hybrid financial instruments that contain an embedded derivative that otherwise would require bifurcation?

Yes. We support the Board's decision to permit fair value remeasurements for hybrid financial instruments that contain an embedded derivative that otherwise would require bifurcation for the reasons noted above.

Issue 2: Should the proposed Statement provide implementation guidance on how to evaluate whether an instrument contains an embedded derivative that would require bifurcation? If so, what type of guidance do you believe the Board should consider?

Yes, provided that such guidance simplifies the analysis and allows the use of reasonable judgment in assessing complex hybrid financial instruments. One such approach would be to specify that entities only look to the assets and liabilities of the vehicle where the existence or non-existence of an embedded derivative cannot be determined from examining the contractual terms of the hybrid financial instrument. The Board may also want to consider the IAS No. 39 approach which would permit fair value election for any hybrid instrument unless it is clear "with little or no analysis" that the embedded derivative would not require bifurcation.
Issues 3: This proposed Statement requires evaluation of instruments for identification of embedded derivatives and permits but does not require fair value measurement for instruments that contain embedded derivatives that otherwise would require bifurcation. Are the requirements for evaluating and accounting for interest issued by a qualifying SPE clear and understandable? If not, what additional clarifying guidance should the Board consider?

We support the deletions to paragraph 35c of SFAS No. 140 that remove certain restrictions around the uses of derivatives in QSPEs. However, the Board should consider deleting paragraph 40 from SFAS No. 140 in its entirety. With the rescission of DIG Issue D1 and the proposed amendment of SFAS No. 133 to require bifurcation of derivatives embedded in interests issued by a QSPE, the remaining purpose of paragraph 40 is not clear. If the Board does not wish to delete paragraph 40, then we recommend the deletions to paragraph 40 as proposed be approved. We also believe these changes should be moved to the Hybrids ED.

Issue 4: The proposed Statement would be applicable to all instruments obtained or issued after the earlier of fiscal years beginning after December 15, 2005, or fiscal years that begin during the fiscal quarter in which the Statement is issued, if applicable. Do you believe that the effective date provides sufficient time for implementation by calendar year reporting enterprises?

Yes, we agree with the proposed effective date.
III. Servicing ED

We strongly support the proposed accounting in the Servicing ED. Requiring the initial measurement of servicing assets at fair value and allowing for the subsequent measurement at either fair value or lower-of-cost-or-market will simplify loan sale accounting and eliminate either the asymmetrical accounting when economically hedging servicing rights using an on-balance sheet portfolio of investment securities or the operational burden under SFAS No. 133 of using a derivative hedging strategy. We are also in agreement with the proposed disclosures since they will improve financial statement transparency and provide insight into an entity’s risk management activities.

Issue 1: Do you believe that transitions provisions permitting the transfer of securities classified as available for sale to the trading category without calling into question an entity’s treatment of such securities under Statement 115 are necessary?

Yes. We believe the Board should include transition provisions permitting the transfer of securities classified as available for sale to the trading category without calling into question an entity’s treatment of such securities under SFAS No. 115.

Issues 2: If so, do you believe there should be restrictions on the ability to make such transfers?

Yes. The transfer should be limited to a one-time event coinciding with the adoption of the final Statement.
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**Issue 3:** If you currently use securities classified as available-for-sale to offset the income effects of changes in fair value of servicing assets or liabilities, is there a company-specific mechanism to designate certain securities classified as available-for-sale for this purpose?

Not applicable.

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We would be pleased to address any questions you may have regarding the comments in this letter or to discuss our position in more detail, at your convenience. I can be reached at 704-383-6101 or by email at david.julian@wachovia.com.

Sincerely,

David M. Julian  
Executive Vice President and Controller

cc: Robert P. Kelly, Senior Executive Vice President and Chief Financial Officer