

Letter of Comment No: *2*  
File Reference: 1200-QSU



COMMERCIAL  
MORTGAGE  
SECURITIES  
ASSOCIATION

30 Broad Street, 28<sup>th</sup> Floor  
New York, NY 10004-2304  
Tel 212.509.1844  
Fax 212.509.1895  
[www.cmbms.org](http://www.cmbms.org)

April 12, 2005

*Via E-mail*

Ms. Patricia Donoghue, Project Manager  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

Re: FASB Project on Qualifying Special-Purpose Entities and Isolation of Transferred Assets

Dear Pat:

The Commercial Mortgage Securities Association (the "CMSA") is the international trade organization for the commercial real estate capital markets, whose mission is to improve the liquidity of commercial real estate debt through access to the capital markets. The CMSA supports The Bond Market Association's ("TBMA") letter to you, dated March 31, 2005, in which TBMA expressed concern regarding the Board's tentative decision to require that any time a transferor retains or receives a non pro-rata interest in a financial asset (or in an entity that owns a portion of the financial asset) the whole original asset must be transferred to a QSPE. We believe that legal isolation is not strengthened by use of a QSPE rather than an SPE and plan to address this in detail in our comment letter responding to the FAS 140 exposure draft.

Commercial mortgage loan originators frequently originate large commercial mortgage loans represented by a single note and mortgage with the intention of later splitting the single financial asset into senior and subordinate economic interests and selling one or both of these interests. At the time the loan is originated, the originator does not know exactly how the senior and subordinate interests will be sized to meet market needs at a later time and both business practice and the loan documents frequently do not permit going back to the borrower to get the single note split into two separate notes (one senior, one subordinate) secured by the same property. In certain structures regularly used in the commercial mortgage securities industry, the originator creates

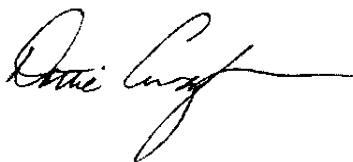
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senior and subordinate participation interests in a whole loan, transfers the senior participation interest to a securitization trust that issues highly rated commercial mortgage-backed securities, and retains the subordinate participation interest which it may sell at a later time. For purposes of this example, assume the securitization trust is a QSPE, the transfer of the senior participation interest is a "true sale" for legal purposes, and the transfer of the senior participation interest otherwise meets the current requirements of FAS 140. Under our reading of the Board's tentative decision, if the originator plans to retain a non-pro-rata portion of a financial asset, in order to qualify for sale accounting treatment of the transfer of the senior participation interest, the originator would be required to establish a QSPE to issue the participations in the first place. The CMSA does not understand why this additional step is necessary.

We join with TBMA in asking that the Board reconsider its tentative decision on this point, in that always requiring the use of a QSPE is unnecessary and existing accounting standards are sufficient to prevent abuse.

We appreciate the opportunity to present our views. If it would be helpful to the Board and the staff, we would be happy to make CMSA staff and member firm personnel available to meet and discuss the points raised in this letter. Please address any questions or requests for additional information to the undersigned at 212-509-1854 (dottie@cmbs.org), or to Stacy Stathopoulos at 212-509-1950 (stacy@cmbs.org).

Sincerely yours,



Dottie Cunningham  
Chief Executive Officer  
Commercial Mortgage Securities Association

cc: Robert Herz (rhherz@fasb.org)

Eric Smith (mesmith@fasb.org)