

Letter of Comment No: 44
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July 31, 2003

Mr. Larry Smith
Director of Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116
File Reference No. 1200-001

Re: Proposed Amendment of FASB Statement No. 140

Dear Mr. Smith:

The Financial Institutions Accounting Committee (FIAC) is pleased to have the opportunity to provide you with our comments and observations related to the Exposure Draft (ED)—*Qualifying Special-Purpose Entities and Isolation of Transferred Assets, an amendment of FASB Statement No. 140*.

FIAC is a group of 13 financial professionals working in executive level positions in the thrift and banking industries and is a standing committee of the Financial Managers Society. FIAC's primary responsibility is to evaluate those accounting and regulatory matters that affect financial institutions. The comments within this letter are representative of the FIAC as a whole and do not necessarily reflect individual views of the institutions represented on the Committee.

We are encouraged by the fact that the Board is seeking to add clarity to FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, and hope that your work will improve the consistency of application of this standard, as well as improve financial reporting.

While FIAC supports the efforts being made to provide additional clarification regarding permitted activities of qualifying SPEs, the guidance included in this proposed amendment, particularly relating to the new restrictions prohibiting entities from achieving Q status, is not consistent with guidance found elsewhere in accounting literature. Unfortunately, we believe the proposal as it exists today adds further confusion, rather than clarification, in certain areas.

FIAC

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The following are issues that we believe need to be addressed and require further clarification:

Limitations on Transferors Regarding Liquidity Commitments

We have several major concerns regarding the proposed amendment to paragraph 35(e). The amendment prohibits a QSPE from entering into an agreement with a transferor, its affiliates, or its agents that commits any of the parties to deliver additional cash or other assets to the SPE or its BIHs. Our concerns are:

- We do not agree that all forms of liquidity provided by a transferor or its affiliates or agents are indications of control. We agree that the decision to draw on the liquidity, if made by the transferor or affiliates, would be considered a form of control. Conversely, if the decision to draw on the liquidity facility is made by another party, then the transferor or its affiliates or agents would not be considered to have retained control.

The proposed amendment is inconsistent with paragraph 9(c), which prohibits calls but allows for puts in qualifying transactions. We do not understand how these liquidity puts and other derivative put options would be considered to be evidence of control by the transferor or its affiliates or agents in these instances. Accordingly, we are uncertain as to why these types of derivatives should be prohibited. FIAC believes that only those derivatives that (1) preclude isolation under paragraph 9(a) from being achieved or (2) that cause the transferor to retain effective control under paragraph 9(c) should prohibit a SPE from achieving Q status.

- The prohibition for the transferor to provide any "indirect" liquidity to the trust would cause any GSE securitization in which the lender keeps any recourse to Fannie Mae not to be a qualifying SPE. These types of transactions are prevalent in multifamily loan securitizations and also in some single-family loan securitizations.
- We believe that the amendment to paragraph 35 (e) should be limited to other parties with direct commitments to provide liquidity. Similar to issues raised regarding the application of FIN 46, it is impractical to ascertain whether "all other parties" related to those providing liquidity commitments have been identified, what each party's exposure or commitment is, etc.
- Paragraph 35 (e) of the proposal would cause certain GSE securitizations to fail Q status because the servicer must pay the full month's interest in the month of a prepayment, and is subject risk. The SPE will fail Q status in this instance because the servicer has this requirement and is not reimbursed. We do not believe that it was the intent of the FASB to jeopardize Q status based on these commonplace actions taken by servicers.

Limitations Regarding Derivatives

Proposed amendments to paragraph 35(c) would prohibit a transferor, affiliate or agent from being a counterparty to any derivatives. As stated above, we do not agree that certain derivatives (i.e.: liquidity put options) afford the transferor control and feel that these types of transactions should be allowed.

In addition, guarantees meet the definition of a derivative but have been excluded from the scope of SFAS 133. We are confused as to whether or not guarantees as mentioned in paragraph 35(e) of this amendment meet the definition of a derivative. If so, Q status could not be achieved. If they are not considered derivatives under this amendment, is FIN 45 the appropriate accounting guidance to be followed?

Prohibitions on Reissuances

Paragraph 35(e) provides an exception related to forward contracts entered into in revolving period securitizations. However, there is no such exception stated in paragraph 35(f) relating to parties with the ability to reissue beneficial interests. FIAC believes that the term reissuance needs to be more clearly defined. In addition, we believe that the scope should be further limited to transactions where discretion in rolling over beneficial interests is expected to have a material impact on residual cash flows.

We agree with other commentators who have indicated that FASB seems to presume that any rolling over of beneficial interests by an SPE will always create a potential for some party to materially influence its own, or some other party's, economic returns. In many cases, this is not true.

In particular, we do not believe that the ability to make decisions about rolling over investment grade instruments that are limited to a tenor of 397 days or less provides a meaningful ability to influence any party's economic returns. We concur with the request that the special new provisions relating to SPEs that roll over beneficial interests should only apply where the range of permitted maturities creates a possibility to materially influence the residual cash flows in a transaction, and that a restriction to maturities under 397 days be included as an example of a range that would not ordinarily create that possibility.

The suggested 397-day tenor limit is drawn from Rule 2a-7 under the Investment Company Act, the primary regulation governing money market funds. In Rule 2a-7, the SEC has set out the requirements that a registered investment company must satisfy if it wishes to use the phrase "money market," or similar terms in its name. Companies that satisfy these requirements are permitted to use the Amortized Cost Method or the Penny-Rounding Method to calculate their current price per share, rather than the market valuation methods otherwise applicable to registered investment companies.

Conclusions

The amendment as proposed seeks to define extremely stringent and specific rules regarding a transferor's continued involvement in securitizations. This is in direct conflict with the SEC's and the Board's decision to move toward a principles-based approach. As mentioned in our letter to you dated January 2, 2003 regarding the proposal for principles based standard setting, the exponential expansion of this type of rules-based approach has led to a lack of transparency and at times the illogical application of accounting rules to particular transactions.

We believe this to be especially true with this proposed amendment. While attempts to add clarification to the existing standard are appreciated, we have isolated several areas where we believe further clarification is needed, and support any efforts to do so in a manner consistent with that of a principles-based standard.

We look forward to the opportunity to address these and any other matters with you at our meeting on September 12, 2003.

Respectfully,

Joe Perillo
Chairman, FIAC