



800 Nicollet Mall
Minneapolis, MN 55402

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July 28, 2003

Mr. Robert Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Dear Mr. Herz:

U. S. Bancorp appreciates the opportunity to comment on the Exposure Draft of the Proposed Statement of Financial Accounting Standards, "Qualifying Special-Purpose Entities and Isolation of Transferred Assets," an amendment of FASB Statement No. 140 (the Exposure Draft). The Board's reasons for issuing the Exposure Draft are sound. However, we have significant concerns regarding the impact to the current accounting model, several specific provisions that restrict transferors, and the implementation period. We believe additional consideration should be given to our comments prior to finalization of the Exposure Draft.

Control Framework of FAS 140

The Exposure Draft is moving away from the original accounting model developed with SFAS No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities, a replacement of FASB Statement No. 125. (FAS 140) by introducing risks and rewards retained by the transferor instead of relying on the control based principles established under FAS 140. Several of the proposed restrictions are based on risk concentration and risk dispersion instead of the concepts of control established in FAS 140. In practice many structures where the transferor does not maintain control over the transferred assets may fail to meet the proposed QSPE standards because of some insignificant retained risk of the transferor. We believe the Board could have retained a pure control based model and still achieved its objectives.

Reissuances of Beneficial interests

Paragraph 5.f. (2) of the Exposure Draft places certain restrictions on the activities of the parties that make decisions about the "reissuance" of beneficial interests. These parties are restricted from entering into a commitment to deliver additional cash or other assets to fulfill the SPE's obligations to beneficial interest holders or from holding beneficial interests other than the most senior in priority. It is not clear whether the concept of "reissuance" in this section includes periodic issuances of securities that result in a corresponding decrease in the previously unsold "seller interest" for traditional master trust structures. The Board specifically carved the forward commitments in these transactions out of the restriction in paragraph 5. e. of the Exposure Draft. The forward commitments in these transactions should also be excluded from the restrictions in paragraph 5.f. (2). The term "reissuance" in the Exposure Draft appears to be more consistent with a commercial paper funding program (where proceeds from new

issuances of beneficial interests are used to repay maturing beneficial interests), than a traditional master trust program (where each series is paid from collections and new issuances are made as a reduction of the retained transferor interest). The Board has addressed the issues related to these revolving period securitizations and master trusts when deliberating Statement 125 and 140 and should be comfortable with these types of issuances in the context of a QSPEs activities. We request that the Board more clearly define reissuance to exclude this type of activity. In addition, we suggest that the Board use the narrower more descriptive phrase "roll over" as opposed to the term "reissuance of beneficial interests".

Restrictions on Transferors, Affiliates and Agents

Paragraph 5 of the Exposure Draft restricts a transferor from entering into an agreement to deliver additional cash or other assets to the QSPE or its beneficial interest holders. Most securitizations including mortgage loan securitizations include provisions that the transferor shall repurchase assets or indemnify the trust if the standard representations and warranties are breached. These provisions serve to protect the beneficial interest holders from documentation deficiencies, fraud, and assets that are delinquent at the time of sale. This provision could require most securitizations, including mortgage loan securitizations, to be subject to the provisions of Financial Interpretation No. 46 (FIN 46), "Consolidation of Variable Interest Entities", as most require the transferor to deliver cash to the QSPE. We do not believe that this is the intention of the Board based on the fact that the Board retained an exception in FIN 46 for QSPEs. In addition, FAS 140 clearly provided for the retention of liabilities related to sold assets at fair value in paragraph 11.c.

We request that the Board clarify restrictions on the transferor's ability to provide derivatives and other guarantees or commitments to QSPEs. These restrictions ban transferors from retaining small amounts of risk related to the transferred assets and are in conflict with the effective control model of FAS 140. The Board provided that transferors could retain economic risk through holding 90% of the beneficial interests of a QSPE structure in FAS 140 and we strongly believe that similar risk could be retained through a derivative. In addition, commitments should be permitted as long as the transferor does not control them and the commitments are recorded at fair value in the transferor's financial statements.

We agree that QSPEs should not be able to enter into total return swaps with the transferor, because these transactions generally transfer most of the risk back to the transferor. However, many QSPEs enter into standard fixed to floating interest rate swaps with the transferor that cause little risk to be retained by the transferor than if the transferor retained 90 percent of the beneficial interests of the QSPE, which is provided for in FAS 140. The basis for conclusions of the Exposure Draft states that "risk transfers from a qualifying SPE to a transferor through derivatives are prohibited." We believe that this is entirely different than prohibiting QSPEs from entering into any derivative transactions with the transferor. In addition, it appears that the wording in paragraph 4 of the Exposure Draft would not permit the transferor to hold a clean-up call option, a provision that is clearly permitted in FAS 140.

Transition and Grandfathering Provisions

The transition provisions grandfather existing QSPEs from the consolidation provisions only if the structure does not acquire new assets that were not previously contracted for and it does not issue new beneficial interests. We believe the Board should modify the transition provisions to grandfather all transactions that complied with the existing QSPE rules at the time they were formed and that continue to meet those requirements in good faith. Existing structures can be difficult to restructure due to restrictions currently in place on QSPEs related to contractual changes to documents. At a minimum, the Board should grandfather existing QSPE structures that issue new beneficial interests solely in response to an asset sale that was previously contracted for, a reduction in the seller's interest in a term securitization, or a requirement in the governing documents that new beneficial interest be issued to repay maturing ones until the asset pool matures.

Effective Date

For public entities, the Exposure Draft provides for an effective date of the beginning of the first interim period after the issuance of the final Statement. Many public entities have several structures that may or may not be grandfathered and will require individual review. In addition, significant implementation issues regarding FIN 46 are currently outstanding and will apply to any structures that no longer qualify as a QSPE under the final Standard. Given the significant new QSPE limitations and the inability to easily modify the governing documents of QSPEs without the approval of the beneficial interest holders, we believe that the effective date for existing structures should be extended for at least six months after the issuance of the final Standard.

Thank you for your time and consideration with respect to our views on this matter. Please contact me at (612) 303-4352 with questions or if you need additional information.

Sincerely,



Terrance R. Dolan
Executive Vice President and Controller

cc: Donna Fisher, Director Tax and Accounting, ABA