



Letter of Comment No: 3  
File Reference: 1200-001  
Date Received: 072503

July 25, 2003

**Director**

Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**File Reference No. 1200-001**

**RE: 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)

Thank you for the opportunity to comment on the above referenced Exposure Draft. We note that the guidance of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (SFAS 140) was developed through significant deliberations, has worked well in the market place and has resulted in informative financial statement presentations.

We understand that the FASB issued this Exposure Draft to meet two primary objectives: to provide clarification as to the powers of a qualifying special purpose entity (QSPE) to reissue beneficial interests, and to prevent certain entities from converting to QSPEs to avoid consolidation under FASB Interpretation No. 46, *Consolidation of Variable Interest Entities*. Although we do not disagree with the stated objectives, we have significant concerns with a number of provisions in the Exposure Draft which, in our opinion, are not necessary to support the stated objectives.

**Two-Step Transactions**

The proposed amendment to paragraph 83 of SFAS 140 would deny sale accounting treatment for assets transferred in a two-step securitization transaction unless the transferee is a QSPE. We believe this is unduly restrictive and conflicts with the control-based principles underlying the criteria for derecognition of assets set forth in SFAS 140. Two-step transactions are fairly commonplace within the market and reflect practical legal considerations when developing such structures.

Under the proposed guidance, transfers to a securitization vehicle that cannot meet the strict criteria for classification as a QSPE would be denied sale accounting treatment even though the transferor has in fact clearly given up control over the assets as required by SFAS 140. The apparent change in view espoused by the exposure draft is the presumption that the transferee does not have the right to pledge or exchange the assets, which negates the factual situation that the transferor has surrendered control. We believe that this underlying presumption confuses the criteria for derecognition of assets with the criteria for establishing a QSPE and would lead to inappropriate results.

For example, under current accounting standards, a QSPE must be passive. The proposed amendment to paragraph 83 of SFAS 140 would therefore deny sale accounting treatment for all transfers of assets into a managed securitization vehicle in which assets are actively traded. We believe this new restriction is unnecessary, in particular as the securitization vehicle would be subject to consolidation by the transferor if, in accordance with FIN 46, the transferor held a controlling financial interest.

We believe that the criteria for derecognition of assets, which were subject to considerable debate and public comment during the development of SFAS 140, are sufficiently rigorous and have resulted in market acceptance of appropriate financial reporting. Those well established criteria should not be modified as the result of this Exposure Draft and thus generate inappropriate financial reporting results.

#### **Re-Issuance of Beneficial Interests**

The proposed amendment to paragraph 35 refers to a QSPE's ability to "reissue beneficial interests". We suggest that this term be clarified. We believe that the intent of the proposed amendment is to restrict the issuance of new beneficial interests where the proceeds from such issuance are used to repay existing beneficial interests that are owned by investors other than the transferor, its affiliates, or agents. We do not believe that the intent is (or should be) to restrict new issuances of debt from a Master Trust where such issuances are not linked to the repayment of existing beneficial interests which continue to remain outstanding and will be repaid in accordance with their original terms by cash generated from the assets held in the securitization vehicle. We therefore suggest that the term "reissue" be clarified to exclude issuances from a Master Trust or similar vehicles which are not linked to the repayment of existing beneficial interests.

#### **Agreements to Deliver Additional Cash or Other Assets**

Although we support your attempt to restrict a transferor from providing ongoing, broad financial support to a QSPE, we believe that the restrictions set forth in paragraph 5 of the Exposure Draft are unduly severe and have unintended consequences.

First, most, if not all, securitizations require the transferor to indemnify the securitization vehicle against a breach of standard representations and warranties. These arrangements were contemplated by SFAS 140 and have been regularly employed and the result has been appropriate financial reporting. However, the proposed restrictions, which would prohibit a

transferor from entering into an agreement “to deliver additional cash or other assets” to a QSPE, could be interpreted as prohibiting this standard form of indemnification.

Second, we believe that the transferor should be permitted to provide liquidity support to a QSPE provided that such support does not function as a guarantee of payment or otherwise serve to protect the beneficial interest holders from credit risk. For example, a securitization vehicle may need to draw on short-term liquidity facilities designed to bridge a gap in the timing of payments received on assets as compared to payments due on beneficial interests. Such facilities are not designed to provide credit enhancement or long-term financial support to the vehicle. They may have a limited notional amount, reflective of the limited nature of liquidity support to be provided. We see no conceptual basis for prohibiting the transferor from providing such a liquidity facility to a QSPE as is currently done on a regular basis.

Third, we believe that the transferor should be permitted to continue the current accepted practice of entering into passive derivative contracts with a QSPE provided that such contracts do not function as a guarantee or otherwise protect beneficial interest holders from credit risk. For example, a derivative may provide for the exchange of fixed-rate interest payments received on assets for variable-rate interest payments due on beneficial interests. If the notional amount of the derivative is limited to the investors’ portion of non-defaulted assets held in the securitization vehicle, such a derivative does not function as a guarantee to the beneficial interest holders. Instead, it represents the retention by the transferor of interest rate risk. The retention of this risk by the transferor is not an indication that the transferor has failed to give up control over the assets and should not be a factor in determining whether a securitization vehicle is a QSPE.

We recommend that the restrictions against the transferor entering into an agreement “to deliver additional cash or other assets” to a QSPE be modified such that indemnifications against a breach of standard representations and warranties are expressly permitted, and only arrangements which function as a guarantee or otherwise serve to protect the beneficial interest holders from credit risk are prohibited.

### **Transition Guidance**

Paragraph 13 of the Exposure Draft would permit an existing QSPE to be grandfathered and retain its qualifying status under current standards if it does not issue new beneficial interests or “receive assets other than those it was committed to receive (through commitments to beneficial interest holders unrelated to the transferor)” prior to the effective date of the Statement. We suggest that this provision be clarified, particularly as it pertains to Master Trusts. For example, a Master Trust may issue long-term beneficial interests that are to be repaid by short-term assets, such as credit card receivables. As existing receivables are repaid, the transferor may be required to transfer newly-generated receivables or new accounts to the Master Trust to maintain an adequate level of collateral. Without such transfers, the Master Trust would experience an early amortization event, with a significant negative impact on investors. We therefore recommend that paragraph 13 be clarified to ensure that the term “commitments to beneficial interest holders” includes transfers to a securitization vehicle that are necessary to support existing beneficial interests through the end of their contractual maturity. Stated another way, we recommend that a grandfathered QSPE be permitted to accept transfers of assets which do not result in the issuance of new beneficial interests.

\*\*\*\*\*

Thank you very much for your consideration. If you would like to discuss these recommendations in more detail, please call Barbara Riddell at 401-278-5091 or me at 617-434-2341.

Sincerely,

Ernest L. Puschaver  
Director of Finance  
Chief Accounting Officer