COMMERCIAL MORTGAGE SECURITIES ASSOCIATION

The Real Estate Roundtable

October 30, 2008

VIA EMAIL

LETTER OF COMMENT NO. 6

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7 Corporate Park
P.O. Box 5116
Norwalk, CT 06856-5116

File Reference No.: 1610-100

Dear Mr. Golden:

Thank you for the opportunity to comment on the Proposed Amendment to FASB Statement No. 140, *Accounting for Transfers of Financial Assets* (the "Exposure Draft"). This comment letter is being submitted jointly on behalf of the Commercial Mortgage Securities Association ("CMSA"),[1] the Mortgage Bankers Association ("MBA")[2] and the Real Estate Roundtable ("RER").[3] Before

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[1] CMSA is dedicated to promoting the ongoing strength, liquidity and viability of commercial real estate capital market finance worldwide. With commercial mortgage backed-securities ("CMBS") in the U.S. currently valued at almost $1 trillion, CMSA acts as the voice of the marketplace encouraging the development of consensus positions among its diverse membership which encompasses the full range of market participants, including investment banks and commercial banks, rating agencies, insurance companies, service providers and investors at all levels of risk. For additional information, visit CMSA's Web site: www.cmbs.org.

[2] MBA is the national association representing the real estate finance industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[3] The Real Estate Roundtable brings together leaders of the nation's top publicly-held and privately-owned real estate ownership, development, lending and management firms with the leaders of 16 national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. Collectively, RER members' portfolios contain over 5 billion square feet of office, retail and

proceeding to our more detailed comments and suggestions, we would like to recognize the effort that has gone into producing the Exposure Draft and express our support for your goals "to improve the relevance, representational faithfulness, and comparability of the information that a reporting entity provides in its financial statements about a transfer of financial assets; the effects of a transfer on its financial position, financial performance, and cash flows; and a transferor's continuing involvement in transferred financial assets." Nonetheless, we are concerned this Exposure Draft falls short of advancing these goals.

Implementation and Convergence

We do not support the proposed implementation date of fiscal years beginning after November 15, 2009. Moreover, we do not believe that the proposed Exposure Draft in its current form achieves its intended purpose. We urge FASB to take additional time to deliberate on the revisions to the derecognition standards and to the consolidation standards in Interpretation No. 46(R). Additional deliberation is especially warranted in light of the importance of international convergence on the matter at issue. It would be most beneficial for preparers and users of financial statements if FASB and IASB were to issue a single standard with a single date of implementation.

In addition to our paramount concern that these provisions are simply too important to be implemented after so short a period of reflection, comment and discussion, we have several specific comments on this proposal.

Derecognition Standards

With regard to the derecognition standards in paragraphs 8A, 8B and 9, we have the following three concerns that we believe need to be addressed in the final amendment.

First, the concept of an "individual financial asset" should be clarified to recognize that separate contractual arrangements with a single obligor that are secured by the same collateral constitute different "individual financial assets." Because the exposure draft makes a distinction between the sale of an "individual financial asset" in its entirety and the transfer of a "participation interest" in an individual financial asset, we believe it is critical for the exposure draft to provide a clear explanation of what is intended by an "individual financial asset." We believe that US GAAP currently respects the separateness of individual contractual arrangements, and that the exposure draft should reaffirm this view. We have provided an illustrative example below that highlights our concern.

A common example is in residential mortgage lending. Very often a financial institution will make a first-lien mortgage loan and also provide (and separately document) a home equity line of credit and/or a second-lien mortgage—all secured by the same residential property. The first-lien mortgage loan and the home equity line of credit are considered to be separate and distinct financial assets for accounting purposes. In practice, each of those contracts is transferred independently, and the sale accounting entries (including the allocation of carrying value) would not aggregate the contracts to treat as one asset.

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industrial properties valued at more than $1 trillion; over 1.5 million apartment units; and in excess of 1.3 million hotel rooms. Participating trade associations represent more than 1.5 million people involved in virtually every aspect of the real estate business. For additional information, visit RER's Web site: www.rer.org.

We believe that this concept should be made clear, perhaps through the addition of an example involving separate contractual arrangements with a borrower, where the different and separate contractual arrangements may provide payment terms other than pari-passu/proportional cash flows from the borrower.

In addition, we believe that it is important for the standards to address the sale treatment of a common participation deal structure used in commercial real estate lending which does not appear to be adequately addressed in the formulation of paragraph 8B. It is common in commercial real estate lending for the holder of a financial asset to sell (through a participation structure) the junior or riskier portion of a financial asset while retaining the senior portion of such financial asset. As currently drafted, paragraphs 8B and 9 of the Exposure Draft would require that such a sale be treated as a secured borrowing under paragraph 12. We do not see how the division of a financial asset into a senior and junior portion through the use of the participation structure and sale of the junior or riskier portion of the financial asset can, in any sense, be construed as a secured borrowing by the transferor. Such a characterization is inconsistent with the financial component approach of FASB Statement No. 140. We believe that FASB should specifically provide in paragraph 8B that a transfer of a participating interest which is a sequentially junior interest should not be treated as a secured borrowing under paragraph 12.

Second, paragraph 9(c)(3) (and the corresponding examples in paragraphs 54A-54D) should be modified to provide that the presence of a restriction on the transferee's right to pledge or exchange the transferred asset it receives, standing alone, should not be deemed to cause the transferor to have "effective control" of the transferred asset. While we recognize that some restrictions may be indicative of retaining control, the mere presence of such a restriction should not automatically cause the transferor to have "effective control" of the transferred asset.

In addition, the benefit concept seems fraught with uncertainty and indeterminacy. If a transfer of a financial asset occurs between parties free to contract, a benefit to the transferee should be assumed. Otherwise, the transferee would not purchase the financial asset. To delve into which aspects of the transaction benefit the transferee and which do not is a complex and uncertain exercise. The inquiry should simply be whether the transferor has surrendered control consistent with customary notions of consolidation.

Nonetheless, if the benefits concept is to continue to be a part of standard, we do not believe that it is necessary or relevant to require the preparer of financial statements to determine whether the transferor or transferee is "primarily" benefited from such constraint. Determination of whether a benefit is a "primary benefit" is so subjective and unquantifiable as to be virtually useless in understanding the fundamental nature of a particular transaction. Such an inquiry would be, at a minimum, burdensome, and result in far too much variability in assessment of transactions that are essentially alike.

Third, paragraph 9(c)(4) should be deleted as the concepts are already covered in paragraphs 9(c)(1) and 9(a). We believe that a price "that is so favorable to the transferee that it is probable that the transferee will require the transferor to repurchase the transferred financial assets" would also "obligate the transferor to repurchase" and would be taken into consideration in determining if legal isolation has occurred.

Additional Disclosure

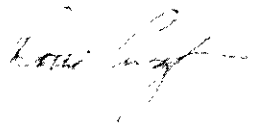
As indicated in our October 15, 2008 letter regarding the Proposed FSP FAS 140-e and FIN 46(R)-e, we are concerned that the proposed changes to the disclosure requirements, together with the changes contemplated in the proposed Amendments to FASB Interpretation No. 46(R), are overly prescriptive and will require entities to provide such detailed and granular disclosure that its meaning is obscured. Specifically, we believe that these proposed disclosure requirements may actually result in less transparency because the ultimate user of financial statements will be presented with too much numeric and qualitative data and too little useful and meaningful information to assess risk. We believe that financial disclosure standards focused on principles-based guidance would better service the needs of the users of financial statements. For your convenience, we have restated our specific concerns mentioned in that letter below.

First, Paragraph 17i requires detailed disclosure where the transferor has continuing involvement (not just significant continuing involvement). We propose that FASB clearly limit the detailed disclosure required in paragraph 17i to those reporting entities that have significant continuing involvement. We believe that to require such detailed disclosure where the reporting entity does not have significant continuing involvement will not provide any true and meaningful benefit to users of financial statements and may ultimately overwhelm and confuse such users with excessive disclosure.

Second, we believe that additional guidance and clarity is needed to assist the reporting entity in preparing the disclosure contemplated by paragraph 17i(1). Specifically, we urge FASB to provide guidance and clarity as to what types of "implicit arrangements" should be considered when preparing the disclosure required by paragraph 17i(1). Our concern is that the proposed language leaves too much uncertainty as to what arrangements, which are not explicitly contractual, should be deemed "implicit arrangements" within the scope of the Exposure Draft. The lack of clarity may result in superfluous and inconsistent disclosures adding no real value to the ultimate user of financial statements.

We would again like to convey our appreciation to be given the opportunity to participate in this process and we would be pleased to meet with FASB or the staff to discuss our concerns or to answer any questions you might have. We respectfully request that you continue the deliberations on changes to FASB Statement No. 140 and FASB Interpretation No. 46(R) to ensure that you carefully consider all critical issues and thereby produce the most robust and operational standard. We believe such a reasonable and appropriate course of action before any final decision is approved will lend itself to the creation of a more appropriate accounting standard in the least disruptive manner.

Sincerely,



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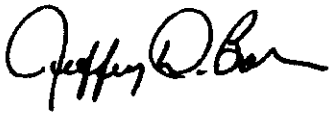

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