

November 13, 2008

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



Attention: Technical Director; File Reference No. 1610-100

By email

Dear Mr. Golden:

The New York State Banking Department (the "Department") has reviewed the proposal to amend FASB Statement 140 and appreciates the opportunity to present the following responses to selected questions.

1. Will the proposed Statement meet the project's objective to improve the relevance, representational faithfulness, and comparability of the information that a reporting entity provides in its financial statements about (a) a transfer of financial assets, (b) the effects of a transfer on its financial position, financial performance, and cash flows, and (c) a transferor's continuing involvement in transferred financial assets?

Yes.

2. Do you agree with the Board's decisions to eliminate the qualifying SPE concept and to require that all securitization entities be evaluated for consolidation under applicable U.S. generally accepted accounting principles? If not, why not?

Yes. The Board should disregard arguments about the expected impact the proposal will have on regulatory capital since regulators have the ability to revise their capital requirements.

3. Certain financial statement users suggested that the Board adopt a nocontinuing-involvement model (that is, if there is any continuing involvement, sale accounting would not be permitted). The Board decided to continue to permit derecognition of financial assets with continuing involvement as long as the conditions in paragraph 9 of Statement 140, as amended by this proposed Statement, are met, with the addition of enhanced disclosure requirements about a transferor's continuing involvement (see paragraph A28 of this proposed Statement). Do you agree with this decision? If not, why do you disagree and what approach would you recommend to meet the needs of financial statement users for additional information on transferred financial assets?

While the simplicity of the no-continuing-involvement model is appealing, it is flawed in prohibiting sales accounting when only servicing rights are retained. Although the Department views the proposal as a positive step, Statement 140 remains an overly legalistic approach which has required a stream of amendments and may require continued maintenance.

We believe a better long-term solution would be to prohibit sales accounting if any recourse is retained by the seller. This basic concept, with minimal exceptions, was used by bank regulators until 1997, when regulatory accounting was changed to comply with GAAP. That decision resulted primarily from the Federal Deposit Insurance Corporation Improvement Act of 1991, which required regulatory accounting to be "no less stringent" than GAAP. We believe a no-recourse model worked well for regulatory accounting and would greatly eliminate the complexity and confusion that has surrounded Statement 140.

4. What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

The costs to preparers are outweighed by the benefits of more accurate accounting. The no-recourse model noted in # 3 would further reduce complexity and cost. See also response to # 9.

5. The Board decided to establish specific conditions for reporting a transfer of a portion of a financial asset as a sale. A transfer of a portion of a financial asset as a sale is eligible for derecognition only for a pro rata portion that meets the definition of a participating interest. Do you agree with this decision? If not, why do you disagree? If you agree with the Board's decision to limit the portions of a financial asset that are eligible for derecognition, do you agree with the definition of a participating interest? If not, what alternative definition do you recommend and why?

For a short-term solution the Department agrees, but we strongly recommend the no-recourse model explained in # 3 for a long-term solution.

9. Due to differences in financial statement user needs and cost-benefit considerations, should any differences exist for recognition, measurement, disclosure, transition, or effective date for private companies? If yes, please articulate what differences should exist and the reasons for those differences.

We believe no exceptions should be made for the accounting. If the Board determines that the cost of providing additional disclosures is excessive

for private companies, it should reduce or defer those disclosures for such companies.

Prior to finalizing this statement, the Board should coordinate with the International Accounting Standards Board and if possible issue a joint statement to further convergence.

If you would like to discuss our letter, please call me at (212) 709-1532 or email me at john.mcenerney@banking.state.ny.us.

Very truly yours,

John McEnerney Chief of Regulatory Accounting