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November 13, 2008

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

RE: Exposure Draft, Accounting for Transfers of Financial Assets, an amendment of FASB Statement No. 140 - File Reference No. 1610-100

Dear Mr. Golden:

The Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks, appreciates the opportunity to comment on the Exposure Draft of the proposed FASB Statement, Accounting for Transfers of Financial Assets, an amendment of FASB Statement No. 140 (the "Exposure Draft").

The Clearing House shares and supports the FASB's objectives "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." However, we do not believe that this Exposure Draft accomplishes these objectives.

The members of The Clearing House are: ABN AMRO Bank N.V.; Bank of America, National Association; The Bank of New York Mellon; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank, National Association; UBS AG; U.S. Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association.

Convergence with IASB Standards

We are cognizant of the fact that the International Accounting Standards Board ("IASB") also has a project on its agenda to develop a new standard on derecognition. We believe this is an opportune time for the FASB and the IASB to work together and coordinate their efforts to issue one global standard on derecognition. We therefore recommend that the Board instead develop a converged derecognition standard with the IASB.

The Clearing House is concerned that if the FASB and IASB pursue their projects separately, there may be significant differences in principal and practice as a result of those separate final standards. The Clearing House believes that it would be more prudent to require institutions to make a single change in accounting standards, instead of having to implement this proposal and then having to undertake a second implementation effort when a converged derecognition standard is issued shortly thereafter. Therefore, we do not support the proposed implementation date of fiscal years beginning after November 15, 2009. We urge FASB to take additional time to work with the IASB to develop one converged standard, uniform derecognition standards, and not issue separate standards.

Measuring Beneficial Interests at Fair Value

The Clearing House believes that the proposed requirement to measure all assets obtained and all liabilities incurred, including servicing assets or servicing liabilities, from a sale at fair value would simplify the accounting for transfers that are sales. Current guidance is a hybrid model that requires transferors to distinguish between interests that continue to be held (which must be recognized at allocated carrying value) and interests, including servicing assets, which are proceeds from a sale (which must be measured at fair value). Consequently, The Clearing House supports the proposed change in measurement.

Elimination of Footnote 10 Exception from Disclosure Provisions

The Clearing House believes the focus of a transferor's disclosures when their only continuing involvement in transferred assets is servicing should be the risks associated with the servicing assets and liabilities. As that information would be disclosed under subparagraphs 17.e, f, and g, of the Proposed Statement, the additional disclosures that would be required under subparagraph 17.h.(6) regarding the status of transferred assets would greatly expand the amount of information that would be required to be disclosed for little, if any, additional benefit to users. The Clearing House recommends therefore that the Board reinsert footnote 10 which provides an exception from the disclosure requirements in subparagraph 17.h.(6) for securitized assets that an entity continues to service but with which it has no continuing involvement other than servicing. At the least, the Board should allow servicers to disclose much less information about transferred assets for which servicers have no other continuing involvement beyond basic servicing activities.

Coordination with the Proposal to Amend FIN 46(R)

The proposal to amend FIN 46(R), Consolidation of Variable Interest Entities, is being issued simultaneously with the FAS 140 proposal. It is not clear as to whether this proposed standard should be applied first and then the proposed amendment to FIN 46(R) or if the proposed amendment to FIN 46(R) should be applied first. Under the latter interpretation, a former QSPE deemed to be the primary beneficiary would be consolidated and, thus, be considered a consolidated affiliate. Then, in applying this proposed standard to the transfer of assets to the former QSPE, proposed paragraph 9 sales criteria would not be met, because the assets were transferred to a "consolidated affiliate." However, if this proposed standard were applied first, sales treatment could potentially be achieved before the FIN 46(R) consolidation analysis was performed. It would seem that the amendments to FAS 140 should be applied first. A decision on accounting for a transfer should precede a decision on the accounting for the transferee entity. We recommend that the final Standard clarify the intent of the Board with respect to the priority of application of both proposed Standards.

Participating Interests

The Clearing House does not agree with the Board's proposal of creating the concept of a "participating interest." We are not aware of any abuses in practice related to transfers of a portion of an asset and this new concept makes the standard much more difficult to apply. We believe the criteria specified to meet the definition of a participating interest are too restrictive and would cause many participations that are widely used in practice to fail sales treatment under the proposal. We note that some participations may not receive sale treatment, whereas if the financial assets were transferred in their entirety with similar economic terms and economic outcome to an SPE with an equivalent interest retained, the transfer would be able to meet the criteria for sale accounting. We believe that it is not an improvement in financial reporting if the form of the transaction dictates the accounting, rather than the economic substance.

In the event the FASB rejects our suggestion to eliminate paragraph 8B of the Exposure Draft, we believe that several implementation issues need to be addressed. We would ask that FASB consider eliminating or revising the requirement in paragraph 8B(b) that the transferor's ownership shares must remain pro rata over the life of the original financial asset. It is not uncommon for the transferor's proportionate interest to vary over the life of the original financial asset. As an example, under construction loan agreements, the lead bank may advance its own funds first to avoid the necessity of contacting the participants before each draw. Additionally, a participant may decide to sell its share back to the lead bank, which would change the lead bank's proportionate interest. Thus, this provision in paragraph 8B(b) as drafted would likely cause many common participation agreements to fail to qualify for sales treatment.

In addition, we are concerned that paragraph 8B(c) could preclude accounting sale treatment for many loan participations that contain standard protection provisions such as the servicer obligation to protect the rights of the contracts or not acting in gross negligence, willful misconduct or bad faith in addition to other ongoing contractual obligations of the transferor that

may be providing other services or making certain covenants in the loan participation agreement. In addition, there may be certain issues regarding recourse to the transferor and/or other participating interest holders under set-off sharing provisions. We urge that the FASB clarify that breaches of on-going obligations would not preclude such interests from meeting the criteria set forth in paragraph 8B.(c).

Transferee's Right to Pledge or Exchange Transferred Assets

We support elimination of the current paragraph 9(b) in FAS 140 which focuses on whether the transferee has the right to sell or pledge the transferred assets. However, some of the concepts in paragraph 9(b) have been carried forward into new proposed paragraph 9(c)(3), and we believe that certain changes are necessary to make this paragraph operational. Proposed paragraph 9(c)(3) of FAS 140 would preclude sale accounting if the transferor maintains effective control through "a restriction on the transferee's right to pledge or exchange the transferred financial asset it receives unless such constraint is designed primarily to provide the transferee with a benefit." Proposed paragraph 54A explains that, in many securitization transactions, "such restriction may exist primarily to benefit the transferee because it enhances the transferee's ability to market the issuance of securities backed by the transferred financial assets to prospective beneficial interest holders."

We believe that the Board's intent was to acknowledge that such transactions should qualify for sale accounting. While the transferor typically markets the securities and receives a benefit at inception in the form of higher proceeds, subsequently the beneficial interest holders benefit from the restrictions, which ensure that they receive the returns generated by a static pool of specific assets.

Consequently, we believe that the condition described in 9(c)(3) should either be removed or expanded to allow the primary benefit to be realized by the beneficial interest holders as well as the transferee. In the current framework, it should not be relevant whether the transferee can sell or pledge, as long as we have determined that the transferor cannot regain control.

Thank you for considering the comments provided in this letter. If you have any questions or are in need of any further information, please contact me at (212) 612-9205.

Sincerely yours,

Kermen R. Molon