



LETTER OF COMMENT NO. 43

November 14, 2008

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

File Reference No. 1610-100

Dear Mr. Golden:

We appreciate the opportunity to comment on the Financial Accounting Standards Board's (the "FASB" or "Board") Exposure Draft of a Proposed Statement of Financial Accounting Standards, *Accounting for Transfers of Financial Assets – an amendment of FASB Statement No. 140* (the "Exposure Draft"). Huron Consulting Group helps clients address accounting issues arising from complex business transactions, as well as issues that arise in litigation, disputes and investigations. Huron provides services to a wide variety of organizations, including Fortune 500 companies, medium-sized businesses, leading academic institutions, healthcare organizations, and the law firms that represent these various organizations.

While we agree that changes to Statement 140 are necessary, we believe the Board should consider making those changes through its project with the International Accounting Standards Board ("IASB") on derecognition instead of this project. While we understand that the credit crisis has created a sense of urgency that is motivating the Board to act now, we do not believe it is in anyone's interests – users, preparers, auditors, or regulators – to require significant changes in accounting for transfers of financial assets twice within what would seem to be a relatively short period. That would be the result if the project team's assessment that the Boards could issue an exposure draft of a proposed standard by March 2009 proves correct, particularly with the delayed effective date proposed in the Exposure Draft.

If the Board is compelled to amend Statement 140 prior to exposing a converged standard on derecognition for comment, we believe it should limit the amendment to the following issues:

1. Eliminating the concept of Qualifying Special Purpose Entities ("QSPEs").
2. Modifying paragraphs 9(b) and 9(c) so the emphasis is on whether restrictions that prevent a transferee from pledging or exchanging transferred financial assets provide the transferor with effective control over those assets.

Rather than the FASB continuing in its attempts to fix Statement 140, we would prefer it allocate its resources to developing a new model as part of its convergence project. The number of amendments and interpretations and the volume of staff implementation guidance issued on Statement 140 (and Statement 125) since 1996 supports a conclusion that Statement 140 is broken. Rather than continuing with a model that a majority of the Board does not consistently support, we believe starting over would be preferable. We recommend a model that precludes derecognition when the transferor has retained the substantive risks of ownership.

The remainder of this letter addresses our specific comments on the Exposure Draft.

Qualifying Special Purpose Entities

We agree with the FASB's decision to eliminate the special accounting for transfers involving QSPEs. The amount of interpretive guidance issued by the FASB, the EITF, and the accounting firms concerning when an entity meets the criteria to be a QSPE has added to complexity in accounting without a corresponding benefit in the quality of information provided to users. Further, the level of control and the risks and rewards retained by a transferor do not appear to us to differ significantly between transfers involving a QSPE and transfers that do not involve a QSPE. We do not believe the status of the transferee should drive the transferor's accounting, either in deciding whether derecognition is appropriate or whether the transferor should consolidate the transferee.

However, we recommend the Board revise its comments in paragraphs A18, A23 and A26 of the Basis for Conclusions. The FASB has long been aware of the first two practice issues cited as raising questions about whether companies were applying Statement 140 correctly. The EITF attempted to address questions about rollovers of beneficial interests in Issue No. 02-12, "Permitted Activities of a Qualifying Special-Purpose Entity in Issuing Beneficial Interests under FASB Statement No. 140," but was unable to reach a consensus. Further, the FASB addressed a number of servicer discretion issues in the Staff Implementation Guidance on Statement 140, indicating an awareness of the extent to which there were practice issues. Finally, we believe the credit crisis raised new issues around servicer discretion, mostly because of pressure on servicers to modify loans on which borrowers were likely to default in an attempt to help those borrowers avoid foreclosure. We think the guidance issued by the SEC staff allowing servicers to modify loans prior to an actual default without violating QSPE status highlights that servicer discretion was significantly limited; if it hadn't been, the guidance would not have been necessary.

If the Board had been concerned about those issues at the time, we assume it would have issued guidance clarifying the application of Statement 140. We think the Board is absolutely correct to eliminate QSPEs, but we encourage it to be more judicious in its comments supporting the change. It serves no purpose to imply that companies had not complied with Statement 140 and only raises the potential for litigation over issues that don't rise to the level of an error.

Proposed Changes to Paragraphs 9(b) and 9(c)

We agree with the Board's decision to remove paragraph 9(b) and address the impact of constraints on the transferee in paragraph 9(c), but we are concerned about whether the condition in paragraph 9(c)(3) that a constraint be designed primarily to provide the transferee with a benefit is operational without further discussion. We believe constraints will, in many cases, benefit both the transferor and the transferee and we are not sure how a transferor should determine whether the constraint is primarily for its benefit or is primarily for the transferee's benefit. The discussion in paragraphs 54A and 54B implies that the provision prohibiting the transferee from pledging or exchanging the transferred financial assets either benefits the transferor or benefits the transferee, but not both. We are concerned with the inevitable second-guessing, years after the fact, of a company's conclusion that a constraint was primarily for the benefit of the transferee.

We assume the Board contemplated a qualitative assessment of which party receives the primary benefit of a constraint. If so, we encourage you to provide application guidance on how you intend a transferor to determine which party receives the primary benefit in cases where a constraint could benefit both. We are not asking for a rule, but we do not find the guidance in paragraph 54D helpful in understanding how the Board believes a transferor should assess a constraint. Further, we were unable to identify any discussion in the *Basis for Conclusions* that provides insight into how Board members intend a transferor to apply paragraph 9(c)(3).

Proposed Amendments to Paragraphs 10 and 11

As amended, the last sentence in paragraphs 10 and 11 require a transferee to recognize the financial asset it acquires at fair value. We assume the Board intends transferees to determine the fair value of the acquired financial asset in accordance with FASB Statement No. 157, *Fair Value Measurements*. If so, we believe that guidance effectively amends the guidance in paragraph 15 of FASB Statement No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*. Paragraph 15 of Statement 91 requires a purchaser of loans and other debt securities to recognize the amount paid to the seller plus any fees paid or less any fees received as the initial investment. If the Board did not intend to change the purchaser's accounting for its initial investment, we believe it should delete the guidance on how a transferee should account for purchases of financial assets.

Participating Interests

We disagree with the proposed change to the accounting for transfers of participating interests. We do not understand why the Board believes the transferor should account for a transfer of a participating interest that provides recourse as a borrowing. That decision suggests that risks and rewards are important to determining whether a transfer qualifies for derecognition, which conflicts with the notion underlying Statement 140 that control over the financial asset is the determining factor. While we understand the concerns

expressed by Board members about relying solely on an attorney's legal assessment that a financial asset has been isolated from the transferor, we do not understand why those concerns are greater for transfers of participating interests than they apparently are for transfers of financial assets in their entirety. We do not see why a legal opinion is sufficient to conclude that a financial asset has been isolated from the transferor when transferred in its entirety, but is not sufficient when the transfer involves a participating interest that does not meet all of the conditions in paragraph 8B. For better or worse, the Board has a derecognition standard that is based on control and it should apply that standard consistently to all transfers, regardless of the form they take.

* * * * *

We would be pleased to discuss any of our comments with the Board or the FASB staff. Please direct any questions or comments to Jeff Ellis at 312-880-3019.

Sincerely,

/s/ Jeffrey H. Ellis

Jeffrey H. Ellis
Managing Director