

MINUTES



To: Board Members

From: Statement 140 Interpretation Team
(N. Stell, ext. 211)

Subject: Minutes of the April 22, 2003 Board Meeting **Date:** April 24, 2003

cc: Bielstein, Leisenring, Smith, Swift, Polley, Cassel, Bullen, Lott, Derivatives Implementation Team, Financial Instruments Team, Gabriele, Sutay, Thompson, Vincent (2), Intranet

Topic: Permitted Activities of Qualifying Special-Purpose Entities

Basis for Discussion: Board memorandums dated April 10, 2003 and April 18, 2003

Length of Discussion: 2:15 p.m. to 3:15 p.m.

Attendance:

Board members present: Herz, Trott, Schipper, Foster, Crooch, Wulff, and Schieneman

Board members absent: None

Staff in charge of topic: Lott

Other staff at Board table: Lusniak, Smith, and Stell

Outside participants: Leisenring (IASB)

Summary for ACTION ALERT:

The Board decided to amend FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, as follows:

- A qualifying special purpose entity may not hold a commitment from the transferor, its affiliates, and agents to provide additional cash or assets to make the contracted payments to beneficial interest holders (for example, liquidity commitments and financial guarantees of the beneficial interests). That requirement is not intended to prohibit servicing advances that do not require the servicer to make the advance if it believes it will not recover its advance.
- A party that is committed to provide additional cash or assets to make the contracted payments to beneficial interest holders may not hold interests that will absorb more than 50 percent of the expected losses of the entity if they occur.
- A party that makes decisions about issuing beneficial interests of the entity may not hold interests that will absorb more than 50 percent of the expected losses of the entity if they occur.
- A qualifying SPE may not hold assets without contractual maturities or with contractual maturities extending beyond the end of the planned life of the entity unless the governing documents include a prespecified date of sale within the entity's planned life.

The Board also decided that:

- Paragraph 9(a) of Statement 140 will be amended to clarify that derecognition of transferred assets is appropriate only if the assets would be beyond the reach of a bankruptcy trustee or other receiver for the transferor or any other consolidated affiliate of the transferor that is not a special-purpose entity designed to make remote the possibility that it would enter bankruptcy or other receivership.

- For public entities, the proposed amendment would be effective at the beginning of the first fiscal quarter after the final Statement is issued.
- For private entities, the proposed amendment would be effective at the end of the first fiscal year after the final Statement is issued.
- The transition for the proposed amendment would be the same as the transition provisions in paragraph 25 of Statement 140.

Matters Discussed and Decisions Reached:

The Board examined three alternatives for limiting the permitted activities of qualifying SPEs:

1. Prohibit a qualifying SPE from holding liquidity commitments and similar commitments from transferors that guarantee payments to transferors.
2. Prohibit a qualifying SPE from holding liquidity commitments and similar commitments from transferors and prohibit guarantors and decision makers from being exposed to more than 50 percent of the qualifying SPE's expected losses.
3. Require that every activity relative to a qualifying SPE's beneficial interests be explicitly specified in the legal documents that formed the SPE.

Three Board members (JMF, RHH, and GMC) supported Alternative 3; two Board members (GSS and KAS) supported Alternative 2; and two Board members (JKW and EWT) supported Alternative 1 but indicated that they would not object to Alternative 2. The Board decided on Alternative 2. The Board then discussed the types of assets that a qualifying SPE may hold and unanimously voted not to allow qualifying SPEs to hold assets that have no contractual maturities unless the governing documents specify a date on which the assets must be sold before the end of the life of the qualifying SPE. The Board directed the staff to proceed with the ballot process. One Board member (JMF) indicated that he would provide an alternative view. The other six Board members indicated that they would support the issuance of an Exposure Draft based on the decisions reached.

Follow-up Items:

The staff will proceed with drafting the proposed Exposure Draft.

General Announcements:

None.