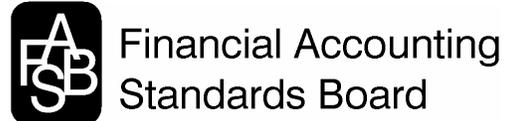


MINUTES



**To:** Board Members  
**From:** Bergstrom (ext. 296)  
**Subject:** Minutes of July 6, 2005 Board Meeting (Proposed FSP 140-c)      **Date:** July 18, 2005  
**cc:** Leisenring, L. Smith, Bielstein, Golden, Donoghue, Laurenzano, Lusniak, E. Smith, Lott, Mahoney, Swift, Polley, Petrone, Gabriele, Bergstrom, Vernuccio, FASB Intranet

*The Board meeting minutes are provided for the information and convenience of constituents who want to follow the Board's deliberations. All of the conclusions reported are tentative and may be changed at future Board meetings. Decisions become final only after a formal written ballot to issue a final Statement or Interpretation.*

**Topic:** Revised Draft of Proposed FSP 140-c: Clarification of the application of paragraphs 40(b) and 40(c) of Statement 140

**Basis for Discussion:** Memorandums 3 and 4 dated June 28, 2005 and June 30, 2005 respectively

**Length of Discussion:** 9:55 a.m.to 10:10 a.m.

**Attendance:**

Board members present: Herz, Batavick, Crooch, Seidman, Schipper, Trott, Young (by Phone)

Board members absent: None

Staff in charge of topic: Donoghue

Other staff at Board table: Lott, Donoghue, Lusniak, and Bergstrom

Outside participants: Leisenring

Summary of Decisions Reached:

The Board discussed a proposed FSP to clarify that paragraphs of 40(b) and 40(c) of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, are not intended to require periodic reconsideration of whether the notional amount of derivatives held or issued by a qualifying SPE exceed the amount of beneficial interests issued to third parties. The Board agreed that paragraphs 40(b) and 40(c) were intended to be applied at the date a qualifying SPE issues beneficial interests. A transferor is not required to reconsider compliance with those paragraphs unless it takes actions different from those contemplated at the issuance date that would cause the notional amount of derivatives to exceed the amount of beneficial interests held by third parties.

The Board directed the staff to draft the proposed FSP for vote by written ballot. If the proposed FSP is approved, it will be posted to the FASB website as soon as possible for a 30-day comment period.

Objective of Meeting:

The objective of the meeting was to obtain the Board's approval to post the proposed FSP to the FASB website for comment. That objective was met.

Matters Discussed and Decisions Reached:

1. Ms. Donohue introduced the topic by asking Board members whether anyone objected to exposing proposed FSP 140-c as drafted. She noted that the purpose of the FSP is to clarify (a) the application of paragraphs 40(b) and 40(c) of Statement 140, and (b) whether the limits on the notional amount of passive derivative instruments that can be held or issued by qualifying special-purpose entity (SPE) need only be tested at inception of the arrangement or it is a continuous test.
2. Ms. Donohue noted that the staff developed the proposed FSP to address inquiries received by the staff regarding what was meant in paragraph 40 by the

following: “has a notional amount that does not exceed the amount of beneficial interests and is not expected to exceed them subsequently.” The focus of the questions were (a) whether an evaluation need only to be done at inception of the derivative arrangement or it should be a continuous test and (b) the types of unanticipated events that would result in a qualifying SPE losing its qualifying status. The two areas of concern were market-making activities and prepayments of beneficial interests. She noted that the staff’s position is that an evaluation need only be done at inception and that unanticipated events should not cause disqualification as long as there was a comprehensive analysis done at inception of the arrangement that anticipates (a) levels of purchases of beneficial interests by the transferor and (b) market-making activities conducted by the transferor or its affiliates that are consistent with the level of outside ownership required by paragraph 36 of Statement 140.

3. Ms. Donoghue explained that constituents encouraged the FASB staff to clarify the guidance in paragraphs 40(b) and 40(c) and noted that applying paragraph 30 as a continual test would result in many qualifying SPEs no longer being qualified. However, the clarification in the proposed FSP would permit existing trading and market making activities of transferors and affiliates to continue under certain circumstances without impacting the status of the qualifying SPE.

4. Mr. Trott expressed concern that the language in the draft FSP allows too much flexibility for the transferor to purchase back beneficial interests and recommended that language be added to require that the amount of market-making activities in the qualifying SPE be consistent with the amount planned at the time of entering into the derivative arrangement in order to continue to be qualified. Mr. Lott expressed the same concerns and recommended that in analyzing the activities of the qualifying SPE, the extent of market-making and trading activities should not be planned to be so extensive that specifications and certain aspects regarding what constitutes a qualifying special purpose entity are bypassed altogether. He also stated that the analysis should not include market-making and trading activities that would cause the qualify SPE to hold passive

derivatives greater than the amount of beneficial interests held by third parties for a significant amount of time. If it happens by chance or for a short period of time that this amount is surpassed, then the activities should not disqualify the SPE. Mr. Lott stated that the proposed FSP should not be a free pass for people to bypass the derivative requirements an SPE must follow in order to be considered qualifying.

5. Ms. Donoghue indicated that such language would be added and stated that the staff recommends posting the proposed FSP for a comment period of thirty days. The Board did not object to posting the proposed FSP 140-c to the FASB Website for a 30-day exposure period.

Follow-up Items:

None.

General Announcements:

None.