MINUTES

To:	Board Members
From:	Statement 140 Team (Cizek, ext. 354)
Subject:	Minutes of the November 14, 2007 FASB Board Meeting: Accounting for Transfers of Financial Assets and Repurchase Financing Transactions
Date:	November 20, 2007
cc:	Golden, MacDonald, Bielstein, Gabriele, Sutay, Posta, Chookaszian, Cosper, Leisenring, Lott, Statement 140 Team,

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, Interpretation, or FASB Staff Position.

Topic:	Accounting for Transfers of Financial Assets and Repurchase Financing Transactions
Basis for Discussion:	Board Memorandum No. 5
Length of Discussion:	12:00 to 12:30 p.m. and 1:15 to 2:00 p.m.
Attendance:	
Board members present:	FASB: Herz, Batavick, Linsmeier, Seidman, L. Smith, and Young
Board members absent:	Crooch
Staff in charge of topic:	Zecher, Donoghue
Other staff at Board table:	FASB: Golden, Lusniak, Mayer, Hoyt, Cizek

Summary of Decisions Reached:

The Board discussed significant issues raised by respondents to the proposed FASB Staff Position (FSP) FAS 140-d, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions*. The Board tentatively agreed to limit the scope to initial transfers and repurchase financing transactions that occur contemporaneously or in contemplation of one another and to retain the rebuttable presumption approach when evaluating the linkage criteria. The Board decided to solicit input from an external resource group regarding the feasibility and operationality of these revisions before finalizing the FSP.

Additionally, the Board decided to:

- Modify the implied commitment criterion to clarify the principle.
- Modify the recourse criterion to clarify the principle.
- Change the marketability criterion to refer to assets that are 'readily obtainable' in the market place instead of financial assets with quoted prices in active markets.
- Expand the marketability criterion to consider other transactions that were contemplated with the initial transfer and repurchase financing.
- Delay the effective date by one year to fiscal years beginning after November 15, 2008.
- Reaffirm that the guidance should be applied using a limited form of retrospective application.
- Provide an exception that derecognition of a held-to-maturity security that results from the adoption of the FSP, should not be considered a tainting event under FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities.

Objective of Meeting:

The objective of the meeting was to address significant issues raised by respondents to the proposed FASB Staff Position (FSP) FAS 140-d, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions.*

Matters Discussed and Decisions Reached:

Issue 1: Scope

1. **Staff Recommendation:** The staff recommended that the Board limit the scope of the proposed FSP to transactions that are entered into contemporaneously or in contemplation of one another. The staff's recommendation is based on respondents' comments that it would be operationally burdensome to evaluate all repurchase financings over the entire life of a transferred financial asset.

2. **Board Vote:** The Board voted tentatively in favor of the scope limitation but will reconsider the scope of the proposed FSP after obtaining input from an external resource group.

3. **Board Comments:** Ms. Seidman stated that the amended scope would imply that if a significant amount of time passed between the two transactions it would be more persuasive that there was a valid business purpose for the repurchase agreement. Mr. Linsmeier responded that he believed this wording may serve better as an indicator rather than as a limitation of the scope of the proposed FSP. Ms. Seidman agreed that it may be a misnomer to include such wording as a part of the scope.

4. Mr. Linsmeier stated that it may be difficult to audit whether the initial transfer and subsequent repurchase financing agreement occurred in contemplation of one another because of the degree of judgment required. Mr. Smith stated that the term *in contemplation* had proved difficult to interpret and audit when included in previous standards. Rather, the application of the criteria listed in paragraph 7

should function to demonstrate if the transactions were in contemplation of one another.

5. Ms. Zecher stated that the reason in contemplation was included as a scope requirement was to improve the operationality of the proposed FSP based on constituent input. Ms. Seidman expressed concern that if a repurchase transaction has any of the factors listed in paragraph 7 of the proposed FSP, including in contemplation in the scope may cause reporting entities and auditors to look back to previous transactions. She stated that this would not improve the operationality of the proposed FSP if every repurchase agreement needed to be evaluated for linkage with a look-back provision. Mr. Golden stated that this language would not require an auditor to look back at each transaction. However, if a repurchase transaction included certain unusual terms, an auditor would inquire to understand the nature of the unusual terms. At such time, it may be determined that the repurchase agreement was done in contemplation of the initial transfer.

6. Mr. Linsmeier agreed that in contemplation is an appropriate notion, however, he does not agree that it belongs in the scope of the document but, rather, possibly as a separate linkage factor. Mr. Golden stated that another way to amend the proposed FSP may be to remove the in contemplation or contemporaneous principle from the scope and include contemporaneous as the first criterion in paragraph 7. The closer the two transactions occurred; more weight would be placed on the positive and negative evidence from the other factors. The proposed FSP would therefore require an indicator approach when applying the linkage criteria. Mr. Herz stated that this would broaden the scope of transactions needed to be considered by the proposed FSP, which was the original reason for including the scope exception. Ms. Zecher agreed that the scope had been narrowed to improve the operationality of the proposed FSP.

7. Mr. Smith suggested drafting the proposed FSP and circulating it to an external resource group. Ms. Seidman stated the staff should specifically ask if the proposed

FSP was more operational with the contemporaneous or in contemplation wording as a scope limitation and the rebuttable presumptions approach.

Issue 2: Approach

1. **Staff Recommendation:** The staff recommended that the Board reaffirm the rebuttable presumption approach, if the scope of the proposed FSP is limited to transactions that occurred contemporaneously or in contemplation of one another, as suggested by the staff.

2. **Board Vote:** The Board voted tentatively in favor of the rebuttable presumption, but will reconsider the approach after obtaining input from an external resource group.

3. **Board Comments:** Ms. Seidman stated that this approach is not consistent with the guidance in Statement 133 Implementation Issue No. K1, "Miscellaneous: Determining Whether Separate Transactions Should Be Viewed as a Unit," that determines if a transaction should be accounted for as a derivative. The guidance in Implementation Issue K1 requires that the transactions be presumed separate while the guidance in the proposed FSP requires that the transactions be presumed linked. From a logical standpoint, it is confusing to understand how two pieces of literature that apply to both parties and end in the same conclusion would require different approaches. Ms. Seidman expressed concern that this may lead to unintended consequences.

Issue 3: Implied Commitments

1. **Staff Recommendation:** The staff recommended that the Board replace the term *implied commitment* with the underlying principle that the pricing and performance of one transaction is not dependent on the terms and execution of the other transaction.

2. **Board Vote:** The Board unanimously voted to accept the wording change.

Issue 4: Recourse

1. **Staff Recommendation:** The staff recommended expanding the language in paragraph 7(b) of the proposed FSP, which refers to recourse, to ensure that the principle of the criterion was fully understood. That is, the initial transferor should receive a sufficient level of recourse to ensure that it is exposed to the credit risk of the counterparty, or its affiliates, and not solely the market risk of the transferred asset.

2. **Board Vote:** The Board voted unanimously to amend the criterion on paragraph 7(b) to better communicate the intended principle. The Board asked the staff to redraft the suggested language.

3. **Board Comments:** Mr. Smith stated that he agreed with the concept of the criterion but questioned how practice would interpret *a sufficient level of recourse*. Ms. Donoghue responded that although this criterion requires judgment, it is difficult to create a bright line because we cannot anticipate how transactions may be structured in the future. Therefore, the staff attempted to take a principle-based approach to address this criterion. Practice will need to determine what level of recourse is sufficient depending on the complexity of the transaction.

4. Mr. Golden stated that the intent of the criterion was that the initial transferor had exposure consistent with a transaction that would occur in a typical open market. Ms. Seidman clarified that essentially the criterion required that that transaction be consistent with one that was not non-recourse. Mr. Linsmeier stated that he agreed with the concept but felt the wording was challenging to understand and needed to be clarified. Ms. Zecher stated that the staff would redraft the wording to address the Board's concerns and better reflect the principle.

5. Issue 5: Marketability

1. **Staff Recommendation:** The staff recommended that the marketability criterion be redrafted to refer to assets that are 'readily obtainable' in the marketplace, instead of assets that have a quoted price in an active market (Level 1 inputs as defined in FASB Statement No. 157, *Fair Value Measurements*).

2. **Board Vote:** The Board voted unanimously to change the marketability criteria to refer to assets that are 'readily obtainable' in the marketplace. Additionally, the Board voted that the marketability section should exclude the concept that consideration of market rates must also apply to any other transaction contemplated with the initial transfer and repurchase financing.

3. **Board Comments:** There were no comments related to the staff recommendation for the redrafting of the marketability criterion to include reference to a 'readily obtainable' asset in the marketplace. Ms. Zecher stated that a Board member raised concern that the counterparties may circumvent the criteria that the transactions must be executed at market rates by embedding off-market term in a separate transaction contemplated with the initial transfer and repurchase financing. Mr. Young believes the criterion proposed is written too narrow and may require additional wording to prohibit this type of circumvention. Ms. Seidman stated that this type of wording seemed unusual to include in a standard.

Issue 6: Effective Date

1. **Staff Recommendation:** The staff recommended that the effective date of the proposed FSP be delayed one year, until fiscal years beginning after November 15, 2008.

2. **Board Vote:** The Board voted unanimously to defer the effective date as recommended by the staff.

Issue 7: Transition Method

1. **Staff Recommendation:** The staff recommended the Board reaffirm its decision that the proposed FSP be applied using a limited form of retrospective application.

2. **Board Vote:** The Board voted unanimously to reaffirm this transition method.

3. **Board Comments:** Ms. Seidman stated that by limiting the scope and giving the additional year of notice with a delayed effective date, it would seem feasible for entities to implement the proposed FSP using a limited form of retrospective application.

Issue 8: Transition Guidance for Held-to-Maturity Securities

1. **Staff Recommendation:** The staff recommended that the Board provide an exception that derecognition of a held-to-maturity security, as a result of adopting the proposed FSP, should not be considered a tainting event under FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*.

2. **Board Vote:** The Board voted unanimously to include this exception within the proposed FSP.

3. **Board Comments:** Ms. Seidman stated that derecognition, because of a change of accounting, is not a sale or transfer and therefore would not taint a held-to-maturity portfolio. She would prefer not to answer this question in the document. Mr. Golden stated that this guidance was requested from constituents during the comment period.

<u>Follow-up Items:</u>

None.

<u>General Announcements:</u>

None.