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February 18, 2009

Via email

Technical Director
Financial Accounting Standards Board
File Reference No. 1025-300
401 Merritt 7
P.O. Box 5116
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Re: Invitation to Comment – Proposed Statement 133 Implementation Issue No. C22, Exception Related to Embedded Credit Derivatives

Wells Fargo & Company (Wells Fargo) is a diversified financial services company with over \$1.3 trillion in assets providing banking, insurance, investments, mortgage and consumer finance services. We appreciate the opportunity to comment on the proposed implementation issue intended to address the breadth of the scope exception for embedded credit derivatives in paragraph 14B of FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities (Statement 133). We believe the proposed amendment to paragraph 14B may have unintended consequences which could create future diversity in practice.

The amendment to paragraph 14B of Statement 133 would redefine when an entity must evaluate embedded credit derivatives for bifurcation. Specifically, this amendment indicates that only the concentration of credit risk in the form of subordination would be exempted from the application of paragraphs 12, 13 and 14A. This appears to be a modification of the Board's conclusion in FASB Statement No. 155, Accounting for Certain Hybrid Financial Instruments (Statement 155), paragraph A21, which explains that "the Board decided not to define concentrations of credit risk as embedded derivatives, regardless of how they arise."

Statement 155 added Example 38 (paragraph 200D) to address a securitization that introduces new credit risk. Although we do not believe the products described in the Example are prevalent, credit-linked notes (CLN) where an SPE holds a credit derivative referenced to Company A and issues beneficial interests referenced to Company A are common. These CLNs are often issued to multiple note holders out of a single tranche (or multiple tranches with pari passu returns). Since subordination of one financial instrument to another is not present, the proposed amendment to paragraph 14B may lead to a conclusion that the CLN contains an embedded derivative requiring the application of paragraphs 12, 13 and 14A.

However, the described CLN resembles a credit sensitive bond, combining a fixed-rate bond and a return feature that entitles the note holder to a different rate of interest depending upon the credit risk changes of the referenced assets in the issuer's credit derivative. As the issuer of the

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CLN is an SPE, its creditworthiness is directly linked to its exposure to the credit risk of the referenced assets in the credit default swap. As such, and consistent with paragraph 190 of Statement 133, the embedded credit derivative would be considered clearly and closely related to the debt host (the CLN).

We believe that the intention of the proposed implementation issue is to codify the positions the Board stated in paragraphs A22 and A23 of Statement 155. Specifically, if a note holder has no future obligation to transfer cash or assets to the SPE, then the credit risk of the beneficial interest is already reflected in its fair value and there is no need for the separate recognition of credit concentrations. We feel that this governing principle is adequately demonstrated in the new examples (Examples 39 and 40). However, we believe the Board may trigger unintended consequences if it does not retain the first sentence of paragraph 14B in its current form. There is no value in removing this sentence and instead, it provides clarity in the application of the scope exception to embedded credit derivatives. If the intention of the Board is to change this governing principle, we feel that further due process is necessary and that the effective date is not operational. Alternatively, if the Board removes the first sentence in paragraph 14B, we believe the following example would be necessary to avoid user confusion:

Illustrative Example: SPE Issuance of a Credit-Linked Note. An SPE wrote a credit default swap on a referenced credit and issues one tranche of credit-linked notes to multiple investors such that no investor holds a majority of the notes. The proceeds of the issued notes, which are smaller than the notional amount of the credit default swap, are placed into a demand deposit account. Each investor receives a pari passu return on their investment and therefore, no subordination of one financial instrument to another exists. Based on the assets of the SPE and the contractual agreements, the investors are not exposed to potential future payments related to defaults on the written credit default swap and the investors cannot lose more than their original investment. Rather, an investor is only exposed to the creditworthiness of the debtor (the SPE), which is the creditworthiness of the referenced assets in the written credit default swap. Consistent with paragraph 61(c), the investor's embedded credit derivative feature is not an embedded derivative subject to the application of paragraphs 12, 13 and 14A of Statement 133 because it relates only to the creditworthiness of the debtor.

We also believe that Example 39 should be clarified to address the issue from a tranche level. The current example explains that "tranches that expose the investor to making potential payments related to defaults on the written credit default swap would contain an embedded derivative subject to" evaluation for bifurcation. It further states that the overall contract may be a derivative in its entirety. This latter point appears in the example as an afterthought; however, we believe this is an important component of the example and should be highlighted. We believe that a reasonable practitioner would conclude that a fully unfunded tranche (i.e. no initial investment) would meet the definition of a derivative in its entirety. However, as is indicated in the example, a partially unfunded tranche may be a derivative in its entirety or require evaluation for the application of paragraphs 12, 13 and 14A. We believe this clarity is imperative for the

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example to be effective for individual note holders, who will be the primary users of the example when assessing the application of the scope exception in paragraph 14B to their investment.

Conclusion

We believe the Board must retain the first sentence of paragraph 14B to meet its objective of resolving "ambiguity about the breadth of the embedded credit derivative scope exception", as removing this sentence would have unintended consequences for simple securitization structures and credit-linked notes. We believe the examples proposed in the implementation issue are beneficial and clarify that when a beneficial interest holder has a future obligation to transfer cash or assets to the SPE an evaluation as to whether the embedded credit derivative requires bifurcation is necessary. Should the Board continue with the amendment to paragraph 14B, we suggest the Board include our illustrative example.

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We appreciate the opportunity to comment on the issues contained in the Board's invitation. If you have any questions, please contact me at (415) 222-3119.

Sincerely,

/s/ Richard D. Levy

Richard D. Levy
Executive Vice President & Controller