



VIA Electronic Mail (director@fasb.org)

October 9, 2008

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

File Reference: Proposed FSP FAS 140-e and FIN 46(R)-e

Dear Board Members and FASB Staff:

The Mortgage Bankers Association¹ (MBA) appreciates the opportunity to comment on the proposed FASB Staff Position (FSP), Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities (“the proposed FSP”). The primary objectives for the proposed FSP are to provide additional disclosures about transfers of financial assets and additional disclosures about an entity’s involvement with variable interest entities until the pending amendments to FASB Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Financial Liabilities (“FAS 140”), and FASB Interpretation No. 46, Consolidation of Variable Interest Entities (“FIN 46”), are effective. The MBA continues to support transparent disclosures that provide needed financial information. However, as discussed further below, the MBA has concerns whether the proposed FSP will achieve these objectives.

MBA’s Comments and Recommendations

Rules-based Nature of the Proposed Guidance--- One of the stated FASB objectives over the last few years has been to move from detailed, rules-based guidance to principles-based guidance. This objective is consistent with the long-term objective of convergence of American accounting standards with international accounting standards. The proposed rules in the exposure draft are very detailed and prescriptive. A result may be the disclosure of an unnecessary amount of information and data, which may obfuscate the important information that may come from a more principles-based accounting rule. MBA recommends that the

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation’s residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA’s Web site: www.mortgagebankers.org.

pronouncement primarily delineate the principles and objectives of the disclosure, allowing individual entities to use their judgment for the disclosures relevant to their financial statements. In addition, MBA recommends that disclosures be limited to contractual arrangements (except in cases where an entity has provided support that it was not contractually obligated to provide) and events that are at least reasonably possible of occurring. The relevance of disclosures is severely compromised when they are based on extremely remote events or on speculation. Meaningful disclosures, on the other hand, provide information about risks that are at least reasonably possible of occurring and could cause significant impact in the near future. Eliminating rules-based specific disclosures and permitting entities to use their judgment will benefit financial statement users most through increasingly meaningful disclosures and by avoiding information overload

It would be helpful for the FASB to describe the principles of providing disclosures for interests in a variable interest entity ("VIE"). FIN 46 is a *consolidation* standard. As such, it is unclear how the disclosures in the proposed FSP provide meaningful information for enterprises that have an interest that poses no consolidation risk. For example, a passive investor in a qualifying special purpose entity ("QSPE") doesn't have a risk of consolidation under the current FIN 46, nor would it have any risk of consolidation under the proposed amendment to FIN 46. Nonetheless, significant disclosures are being proposed for these passive investors. The MBA fails to understand the reason that these proposed disclosures are any more relevant for an interest in a VIE than a non-VIE unless there presents a risk of consolidation, which is many times not the case.

Effective Date – FASB proposes to issue this pronouncement in December 2008, requiring calendar-year reporting entities to provide the additional disclosures beginning with the December 31, 2008 financial statements. MBA's members believe that many of the new disclosures required under the proposed rules require detailed information that may not currently be tracked or aggregated, which is discussed further below. Our members presently lack the systems and infrastructure to capture the data needed under the proposed rules. We recommend that the FASB change the transition rules to require such disclosures commencing with the first interim reporting period in fiscal years beginning after November 15, 2008, with earlier application encouraged.

Scoping Comments – MBA submits the following comments with respect to the scope of the proposed pronouncement:

- **Disclosures for Non-transferors** – The proposed FSP would require detailed, prescriptive disclosures for investors who are neither the transferor nor the sponsor of a VIE. MBA believes that such detailed disclosures are not relevant or appropriate. A passive investor in asset-backed securities, including RMBS, CMBS and ABS securities that are typically structured as QSPEs, is likely to find this requirement onerous due to the time required to review its portfolio, quantify the size of the issuance vehicle, and determine which investment is a significant variable interest. This exercise was not previously necessary due to the QSPE status of the vehicle, and as mentioned above, would not provide meaningful disclosures as consolidation would not be a result under the current or proposed FIN 46. The resulting disclosure would include information about some, but not all, of the investor's portfolio of asset-backed securities. MBA recommends that an enterprise which holds a passive investment portfolio in an entity but does not provide on-going liquidity, credit, or other forms of support to the issuers be

exempt from this disclosure requirement. Alternatively, the enterprise could provide aggregate information about the size of its asset-backed portfolio and the nature of the underlying collateral, without regard to whether a particular investment is a significant variable interest.

- **Expansion of disclosures to secured borrowings** – Under the proposed FSP, the scope of proposed paragraph 17(i) of FAS 140, which includes disclosures of a transferor’s continuing involvement, would be expanded to include asset transfers that are accounted for as secured borrowings. Some of the disclosures required by this paragraph overlap with fair value disclosures under FAS 157. Others are not meaningful for assets that remain on the balance sheet of the transferor (e.g., paragraph 17(i)(6) requires disclosures of cash flows between a transferor and a vehicle, which legal assets owned by the legal vehicle are already incorporated in the financial statements of the transferor). We recommend that the scope of this paragraph not be expanded to include transfers that are accounted for as secured borrowings because they do not provide relevant financial information for users of financial statements.
- **Limit FAS 140 Disclosures to Significant Continuing Involvement and Limit FIN 46 Disclosures for Sponsors to Significant Variable Interests** – MBA recommends that 17(i) be limited explicitly to situations in which the transferor’s continuing involvement is significant. MBA also recommends that plain vanilla interest rate and foreign currency swaps should not subject the transferor to these robust disclosures and should be specifically excluded from the definition of *continuing involvement* in footnote 5 of Appendix B. Similarly, paragraph 22C of Appendix C requires disclosures for sponsors that hold a variable interest in a VIE “irrespective of the significance of the variable interest”. MBA believes that, at a maximum, sponsors that have an interest in an SPE that is not significant should make only qualitative disclosures that describe the enterprise’s involvement. Once again, the result of this over-disclosure may obfuscate the important information making it difficult for financial statement users to identify the material implications of a company’s arrangements.
- **Identifying the primary beneficiary of VIE** – Proposed paragraph 22(c)(a) of Appendix C would require an enterprise to disclose its methodology for identifying the primary beneficiary of a VIE, including significant factors, assumptions and judgments made. A generic response that merely reiterates GAAP would not be meaningful, but a thoughtful discourse on the analysis for each significant VIE would be extremely lengthy.
- **Disclosures of gain on sale calculations** – Paragraph 17(h)(2) of Appendix B would require an entity that has transferred financial assets to an SPE and accounts for that transfer as a sale, disclose the gain or loss from sale, including quantitative information on how the gain or loss was determined. MBA notes that the proposed disclosure requirements already require a description of how retained interests should be valued. MBA recommends that gain on sale accounting be described qualitatively in an entity’s significant accounting policies notes, and that the requirement to include the gain/loss on sale calculation be eliminated from the proposed disclosures.

Disclosures Based on Remote Events and/or Speculation – Certain proposed disclosures appear to call for speculation. For example:

- **Implicit arrangements** – The FSP would require transferors, primary beneficiaries and sponsors of a VIE, and parties holding a significant interest in a VIE or a QSPE to disclose “terms of arrangements that **could** require” the reporting enterprise to provide financial support to the VIE or QSPE, including “events or circumstances that **could** expose” the enterprise to loss, with consideration given to both explicit and implicit arrangements.² (emphasis added)

This language could be interpreted as a requirement to speculate as to any future circumstance in which the enterprise might provide support that is not contractually required. We recommend that this disclosure be limited to contractual arrangements that would require the enterprise to provide financial support or those already considered an implicit variable interest under FIN 46(R)-5.

- **Loss exposure estimates** – Proposed paragraph 24 within Appendix C would require the sponsor of a VIE or an enterprise with a significant variable interest in a VIE to disclose its maximum exposure to loss and its “estimated exposure to loss or range of that loss” if the maximum exposure to loss is not representative of its estimate exposure to loss. The reporting enterprise would also be required to disclose the methodology used to determine its estimated loss exposure, including qualitative and quantitative factors and assumptions.

We are concerned that the disclosure of an estimated loss amount that does not meet the criteria for recognition in the financial statements will result in information that is not meaningful due to the significant level of uncertainty related to such estimates. We also note that some of the disclosures requested in the proposed paragraph 24 are duplicative of disclosures in FIN 45.

We recommend disclosure of loss estimates only if they meet the criteria for recognition in the financial statements, including loss contingencies under FAS 5, derivative liabilities, and guarantees recorded under FIN 45. Companies should not be asked to otherwise speculate within its audited financial statements.

- **Assumptions used to determine primary beneficiary** – Proposed paragraph 22(c) of Appendix C would require a reporting enterprise to disclose how it determined whether it was the primary beneficiary of a VIE and whether “a different assumption or judgment **could have reasonably been made** that would result in a different conclusion” (emphasis added). This provision would require a reporting enterprise to speculate about conclusions that it did not reach based on the hypothetical use of assumptions that it did not make. This disclosure would be highly unusual and unreasonable. A typical FIN 46 analysis includes robust qualitative and quantitative analyses with numerous “decision points” that are not unanimously agreed upon from company to

² This requirement is found in D3(c) for nontransferors, proposed 17(i)(2)(c) for transferors, and proposed 22C(d) for primary beneficiary, sponsors, and parties with a significant interest in a VIE.

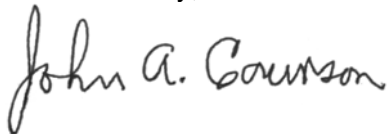
company or accounting firm to accounting firm. It is not reasonable to expect a company to point out diversity in interpretation of a complex standard in notes to the financial statements. We recommend that this requirement be deleted.

Summary

MBA lauds the FASB's efforts to broaden disclosures of transfers of financial assets and involvement with variable interest entities. However, MBA believes the guidance for such disclosures should be principles-based, not prescriptive. MBA believes the proposed disclosures would result in providing readers of financial statements with an unnecessary volume of data that would obfuscate important and meaningful information in the financial statements. In addition, many of the proposed disclosures would require information that is not currently tracked or aggregated. The proposed issue date and effective date for the proposed pronouncement will not allow entities with sufficient time to put in place the systems and infrastructure to track such data. MBA recommends that the effective date be changed to the first interim reporting period in fiscal years beginning after November 15, 2008.

The MBA appreciates the opportunity to share these comments with the Board. Any questions about MBA's comments should be directed to Jim Gross, Associate Vice President and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@mortgagebankers.org.

Most sincerely,

A handwritten signature in cursive script that reads "John A. Courson".

John A. Courson
Chief Operating Officer
Mortgage Bankers Association