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Mr. Russell G. Golden
Director of Technical Application
and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Proposed FSP FAS 140-d

Dear Russ:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Financial Accounting Standards Board's (FASB) Proposed FASB Staff Position FSP FAS 140-d, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions* (the proposal). ABA brings together all categories of banking institutions to best represent the interests of the rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

We are concerned that the proposal would result in treating two identical repurchase financing arrangements differently for accounting purposes based on the origin of the underlying asset, which flies in the face of the Board's aim to generally treat two instruments the same. Further, the proposal may prevent companies from pursuing the most cost-effective financing vehicles available to them to the detriment of investors. We believe that the proposal should not be issued in final form. Below are detailed comments relating to question 1 in the proposal as well as some additional concerns.

Question 1¹

Paragraph 7b

In order to determine whether the initial transfer of a financial asset and repurchase financing are linked, Paragraph 7 requires full recourse if the two parties are also the purchaser and seller (paragraph 7b). Full recourse would allow the seller/lender to pursue remuneration from the purchaser/borrower. Generally, in the absence of full recourse, the seller/lender would only have rights to the underlying asset. In order to ensure that this does not create different accounting treatment for similar types of transactions, full recourse should only be required if it is ordinary business practice to do so when the lender and borrower are not parties to the sale of the underlying asset. If full recourse is not ordinary

¹ Question 1 from proposal: "1. Are the criteria in paragraph 7 of this proposed FSP operational and do they appropriately identify those transactions that should be accounted for separately?"

industry practice for a particular asset, then industry should not be forced to alter current practice in order to achieve the appropriate accounting result. Thus, paragraph 7b should be amended to consider standard practice for repurchase financing that is between parties that are not also parties to the transfer.

Paragraph 7c

Paragraph 7c should be omitted from the proposal. Similar to the preceding paragraph in this letter, the tests that apply to an unaffiliated borrower and lender should be the same as those that apply to a transfer with repurchase financing. Paragraph 7c requires that “the financial asset subject to the initial transfer and repurchase financing has a quoted price in an active market (Level 1 inputs as defined in FASB No. 157, *Fair Value Measurements*). In addition, the initial transfer of a financial asset and the repurchase financing are executed at market rates.” These requirements would preclude repurchase financing for illiquid or lightly traded assets. This would curtail companies’ ability to leverage assets cost-effectively according to business needs. The provisions requiring market pricing should be removed.

Companies that are involved in transfers with financing companies currently collateralize repurchase financings with non-Level 1 assets. Paragraph 7c would restrict – without basis – the availability of repurchase financing for companies that are party to a transfer and would increase the cost of doing business in instances where this would be the most cost-effective and expedient form of financing. This would handicap companies that have engaged in a repurchase financing with the transfer counterparty. The requirement that the initial transfer be conducted at market rates is inexact, because it does not define the concept of market. If by “market” the proposal is indicating that an SFAS 157 Level 1 measurement is required, that is unreasonable, particularly evident from the current market and abnormal pricing environment experienced in the financial markets in the past months.

Paragraph 7d

Paragraph 7d indicates that a transfer will be treated as linked if the repurchase financing and transfer maturity dates are coterminous. The existence of a coterminous maturity date should not preclude sale accounting. This restriction should apply only if the sale date and repurchase financing dates are also the same. Otherwise, this restriction would cause differences in treatment for two repurchase financing arrangements based strictly on the basis of the transfer counterparty.

Paragraph 7e

Paragraph 7e should be amended to restrict only wholly concurrent and coterminous sales/repurchase financings between the same two parties.

Additional Concerns

Timing

The issuance of an FSP to address the question of repurchase financing related to transfers of financial assets should be abandoned in consideration of the comprehensive overhaul of Statement of Financial Accounting Standards No. 140, *Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (SFAS 140) currently being undertaken at the Board. The larger issue of overhauling SFAS 140 would be better served if repurchase arrangements were considered in the amendment project.

Passage of Time

Paragraph 4 indicates that the “lapse of time between the initial transfer and the repurchase agreement is not relevant when determining if the transaction is a repurchase financing within the scope of this FSP.” This wording restricts the ability of entities to finance and transact in the ordinary course of business. Repurchase financings are common, and this restriction on the availability of repurchase financing related to initial transferees and

transferors will unnecessarily impede the efficient use of resources and increase the cost of many transactions. While imposing a safe-harbor may not be desirable by the FASB, it may be a practical way to resolve this issue and minimize the damage this proposal is expected to cause.

Thank you for your consideration of these comments. Please contact Charlie Gilman, ABA's Accounting Policy Advisor (202.663.4986), or me if you would like to further discuss our views.

Sincerely,

A handwritten signature in cursive script that reads "Donna J. Fisher".

Donna Fisher