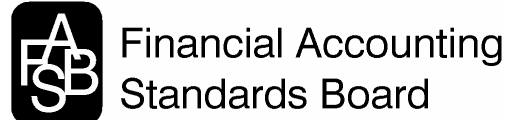


MINUTES



To: Board Members

From: Statement 140 Amendment Team
(Gagon, Ext. 322)

Subject: Minutes of the September 22, 2004 Board Meeting **Date:** September 29, 2004

cc: Bielstein, Smith, Petrone, Leisenring, Project Team, Mahoney, Thompson, Vincent, Sutay, Gabriele, Swift, Polley, Getz, FASB Intranet (e-mail)

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: Isolation of Financial Assets

Basis for Discussion: Memorandum 34
dated September 16, 2004

Length of Discussion: 9:45 a.m. to 10:45 a.m.

Attendance:

Board members present:	Herz, Trott, Schipper, Batavick, Crooch, Seidman, and Schieneman
Board members absent:	None
Staff in charge of topic:	Donoghue
Other staff at Board table:	Lott, Lusniak, Hoermann, and Gagon
Outside participants:	None

Summary of Decisions Reached

The Board discussed whether to (1) amend the isolation requirement of FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, and (2) add a requirement that the transferor must agree to pay the transferee any benefits from exercising setoff on transferred assets in order for the transaction to be accounted for as a sale. The Board made the following decisions at this meeting:

1. The implementation guidance on isolation should be amended to define isolation in a manner that is consistent with the requirements of a true sale at law and an opinion that the transferred assets would not be included in the estate of the transferor or any consolidated affiliate that is not a special-purpose corporation or other entity designed to make remote the possibility that it would enter bankruptcy or other receivership (nonconsolidation opinion).
2. Implementation guidance should be added that describes the conditions the Board understands attorneys require to issue a true-sale-at-law opinion and a nonconsolidation opinion under U.S. bankruptcy and receivership law for transfers of financial assets.
3. The amount of recourse (or guarantee) that can be provided by a transferor that would prevent a transaction from meeting the requirements of a true sale should be left to an attorney's professional judgment based on the facts and circumstances of the transaction.
4. A requirement should be put in place that the transferor must agree to pay the transferee any benefits from exercising setoff on transferred assets in order for the transaction to meet the requirements of paragraph 9(c).

Objective of the Board Meeting

The objective of the meeting was for the Board to decide whether to (1) amend the isolation requirement of Statement 140 and (2) add a requirement that a transferor share with interest holders any benefits it receives from setoff of transferred financial assets. The objective was met.

Matters Discussed and Decisions Reached:

Ms. Donoghue began the meeting by discussing the isolation requirements of Statement 140 and asking the Board the following questions:

1. Should the implementation guidance relating to isolation be amended to define isolation in a manner that is consistent with a true sale at law and a nonconsolidation opinion?
2. Should language that describes conditions the Board would expect attorneys to require to issue a true sale opinion and a nonconsolidation opinion under U.S. bankruptcy and receivership law be included in Statement 140? Should all of those conditions be required to achieve isolation even if an attorney would issue the appropriate legal opinions without meeting all of the conditions?
3. Should recourse (or guarantees) provided by a transferor be prohibited in all circumstances in order to meet the isolation requirement or should the amount of recourse permitted for a true sale be left to an attorney's professional judgment?
4. Should a requirement that a transferor must agree to pay the transferee any benefits from exercising setoff on transferred assets be adopted in order for the transaction to meet the requirements of paragraph 9(c)?

Question 1—Should the implementation guidance relating to isolation be amended to define isolation in a manner that is consistent with a true sale at law and a nonconsolidation opinion?

Ms. Donoghue clarified that this question does not imply that all transactions must be supported by a legal opinion to meet the isolation requirement. Rather, accountants must make a judgment that a transaction would be supported by a satisfactory legal opinion if one were requested.

The Board decided that the implementation guidance in Statement 140 relating to isolation should be amended to define isolation in a manner that is consistent with the requirements for a true sale at law and an opinion that the transferred financial assets would not be included in the estate of the transferor or its consolidated affiliate that is not a special-purpose corporation or other entity designed to make remote the possibility that it would enter bankruptcy or other receivership.

Additionally, the Board stated that the guidance would not require that every transaction be supported by a written legal opinion, but it would require accountants to make a judgment about what type of supporting evidence is necessary depending upon the facts and circumstances of each transaction.

Question 2— Should language that describes conditions the Board would expect attorneys to require to issue a true sale opinion and a nonconsolidation opinion under U.S. bankruptcy and receivership law be included in Statement 140? Should all of those conditions be required to achieve isolation even if an attorney would issue the appropriate legal opinions without meeting all of the conditions?

The Board discussed the following conditions that attorneys consider before issuing a true sale opinion:

1. The transferor has not provided a guarantee of repayment or other form of recourse that would be inconsistent with a true sale at law.
2. The transfer purports to be a sale of a property interest in the underlying financial assets.
3. The interest holder's interest in the financial assets has the same remaining duration as the underlying financial assets.
4. If the transferor continues to act as a servicer of the financial assets or if the interest holder does not obtain the right to directly enforce the underlying financial contracts, the transferor agrees to:
 - a. Act in a custodial capacity (on behalf of or in trust for the participant) with respect to its holding of any underlying instrument or collateral and in holding any proceeds received for the underlying financial assets
 - b. Not commingle for any significant period of time proceeds received on the underlying financial assets
 - c. Directly pass through any proceeds received from the financial asset to the interest holder, less any proceeds that represent servicing or other compensation to the transferor or an interest in the financial assets retained by the transferor
 - d. Administer the financial assets under a standard that does not give it unfettered discretion as to all matters.

Mr. Trott stated that he believes it is appropriate to include these conditions as implementation guidance in Statement 140. He stated that he would like the

conditions to be required, but he believes it would be sufficient to have them as examples in the implementation guidance. He also stated that adding these conditions to Statement 140 will be helpful to preparers and auditors when discussing whether assets have been isolated.

Messrs. Crooch and Schieneman both agreed with Mr. Trott's remarks but indicated that they would have liked to include the conditions as requirements in Statement 140. They stated, however, that they would not object to including the conditions as examples in the implementation guidance.

Ms. Seidman also supports including the conditions in Statement 140. She stated that she believes the conditions should be included in Appendix A of Statement 140 near the guidance on two-step structures.

The Board decided to include the four conditions in Statement 140 as examples in the implementation guidance. The Board indicated that some drafting changes may be necessary.

Question 3—Should recourse (or guarantees) provided by a transferor be prohibited in all circumstances in order to meet the isolation requirement or should the amount of recourse permitted for a true sale be left to an attorney's professional judgment?

The Board decided that the amount of recourse (or guarantees) provided by the transferor that would prevent a transaction from being judged as a true sale should be left to an attorney's professional judgment based on the facts and circumstances of the transaction.

Question 4—Should a requirement that a transferor must agree to pay the transferee any benefits from exercising setoff on transferred assets be adopted in order for the transaction to meet the requirements of paragraph 9(c)?

A majority of the Board members believe that setoff rights should be addressed and that they should be addressed in the context of effective control. They believe that if a transferor has the ability to retain the benefits of reducing its liabilities by setting them off against financial assets that have been transferred,

the transferor has a more-than-trivial benefit and has retained effective control over the assets. As a result, the transaction does not meet the requirements of paragraph 9(c).

Ms. Seidman and Mr. Batavick stated that they would object to including in Statement 140 the requirement that a transferor must pass through any benefits it receives by exercising setoff right in the context of effective control. They believe that effective control, as it is written in paragraph 9(c), means that a transferor has the unilateral ability to reclaim the transferred assets. In this situation, Ms. Seidman and Mr. Batavick don't believe that the transferor has the unilateral, unfettered ability to reclaim the transferred assets. They believe that the setoff rights are more akin to conditional calls that are contingent upon future events and should be accounted for as such. Furthermore, Mr. Batavick believes that the current legal system handles setoff appropriately and, therefore, setoff does not need to be specifically addressed in the Statement.

Follow-up Items:

Based on the Board's decisions that a transfer include a custodial arrangement if the transferor retains servicing rights (Condition 4(a) above), the Board has asked the staff to research whether, for purposes of applying paragraph 9(b), the custodian should be considered the transferee or whether the ultimate holders of interests in the custodian should be considered the transferee.

General Announcements:

None.