



September 27, 2013

Ms. Susan M. Cospers
Technical Director
Financial Accounting Standards Board
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Norwalk, Connecticut 06856-5116
director@fasb.org

File Reference No. EITF – 12Gr, *Measuring the Financial Liabilities of a Consolidated Financing Entity*

Dear Ms. Cospers:

The Mortgage Bankers Association¹ (MBA) appreciates the opportunity to comment on the Financial Accounting Standards Board's (FASB) Exposure Draft (ED), *Measuring the Financial Liabilities of a Consolidated Financing Entity* (Proposed Update). The following are MBA's general comments and responses to FASB's specific questions.

Background

Reporting entities that are deemed to be the Primary Beneficiary (PB) of a Variable Interest Entity (VIE) of a securitization like a mortgage-backed Security (MBS) are required to include the VIE's assets and liabilities in their respective consolidated financial statements. Upon initial consolidation, the PB can elect the fair value option to account for the financial assets and financial liabilities of the VIE. Recently, the Emerging Issues Task Force (EITF) identified diversity in practice in the accounting for the difference upon consolidation between the fair value of assets and the fair value of the liabilities of the VIE. As a result the EITF reached a consensus that PBs that elect fair value option must measure the financial liabilities of the VIE as follows:

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 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 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

1. The sum of the following two amounts:
 - a. The fair value of the financial assets held by the collateralized financing entity
 - b. The carrying value of any nonfinancial assets held by the collateralized financing entity

2. Less the sum of the following two amounts:
 - a. The sum of the fair value of financial assets and the carrying value of nonfinancial assets attributable to the beneficial interest owned by the reporting entity
 - b. The carrying value of any beneficial interests that represent compensation for services rendered by the reporting entity.

General Comments and Questions

MBA Disagrees With Portions of the Proposed Update

MBA agrees that the fair value change that a PB reports in its income statement should be the changes in fair value of its retained interests in the VIE. Thus, reporting should be structured such that what flows to the consolidated income statement should be limited to changes in the fair value of retained interests in the VIE.

However, the Proposed Update would require the use of fair value measures for a VIE's assets in order to measure the fair value of the VIE's liabilities. For most collateralized securitizations, the assets are whole loans that may or may not be separately traded in the financial markets, while the liabilities represent the interests of security holders, and those have a higher likelihood of being traded in the market, resulting in fair value measurements that are generally higher in the fair value hierarchy under ASC 820 than the underlying assets held as collateral in the trust. In fact, reporting entities frequently obtain Level 2 inputs for whole loans by referencing recent sales of MBS. MBA, therefore recommends that the final rule provide reporting entities a choice based upon which instruments (assets of the VIE or liabilities of the VIE) have measurements that are higher in the fair value hierarchy, which is consistent with the proposal in the Task Force's final consensus in March 2013.

Primary Reasons Underlying the Consensus Are Unfounded

Paragraph BC10 on page 16 of the ED states:

In reaching that consensus-for-exposure, the Task Force considered but decided against permitting the value of the financial assets to be measured on the basis of the fair value of the financial liabilities, because this could result in the value of the financial assets inappropriately including an amount relating to the changes in the fair value of any nonfinancial assets held by the collateralized financing entity. In addition, the Task Force decided it could be impracticable to allocate the fair value of the financial liabilities to the individual financial assets on a reasonable and consistent basis.

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First, non-financial assets in the case of MBS generally include assets acquired through foreclosure awaiting sale. In normal economic times, these should be immaterial. These assets are carried at the lower of cost or market (LOCOM) and not at fair value. MBA points out that the formula can be written based on either the fair value of the assets or the fair value of liabilities, while still reporting non-financial assets at LOCOM.

MBA also points out getting the best fair value measure for the vast majority of assets and liabilities of a VIE is much more important than the impact of changes in value of a small group of immaterial, non-financial assets. The principles that should drive the accounting for VIE assets and liabilities carried at fair value should be:

- Reporting should be structured such that what flows to the consolidated income statement should be limited to changes in the fair value of retained interests in the VIE.
- A reporting entity should measure VIE financial assets by reference to fair value measures of financial liabilities or vice versa depending on which measurement is highest in the fair value hierarchy.

Further, MBA sees few problems in allocating the resulting fair value to the financial assets since, in most cases, the financial assets within a specific VIE are carried in the same line item in the consolidated statement of financial position.

Situations Where Assets in VIE Are Not Homogeneous

MBA also points out that a typical commercial mortgage-backed security (CMBS) contains a pool of underlying collateral that could vary significantly in terms of type of real estate property, use and occupancy, geographic location, etc. Valuing these diverse assets is much more difficult and less precise than valuing the liabilities of the VIE which frequently have level 2 fair value measures available. MBA reiterates that the Proposed Update should be based on the principle that the choice to value the assets or the liabilities of the VIE should be based upon which has the fair value measure that is highest in the fair value hierarchy.

MBA appreciates the opportunity to share its observations with you. Any questions about the information provided herein should be directed to me, Vice President Financial Accounting and Public Policy and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@MBA.org.

Sincerely,



James P. Gross
Vice President of Financial Accounting and Public Policy

Appendix A – Responses to FASB’s Specific Questions

Question 1: Do you agree with the measurement of the financial liabilities of a consolidated collateralized financing entity as described in paragraph 810-10-30-2A? Do you also agree that a reporting entity that consolidates a collateralized financing entity should no longer be permitted to measure the financial liabilities of the collateralized financing entity using the fair value option of Topic 825 (whether or not the reporting entity elects to apply the measurement guidance under the proposed Update)?

MBA’s Response: MBA disagrees. See general comment above titled *MBA Disagrees With Portions of the Proposed Update*.

Question 2: Do you agree that a reporting entity that previously elected or was required to measure all eligible financial assets and financial liabilities of the consolidated collateralized financing entity at fair value should be required to apply the amendments in this proposed Update to those collateralized financing entities that exist at the date of adoption? Do you also agree that a reporting entity that had not previously measured all eligible financial assets and financial liabilities of the consolidated collateralized financing entity at fair value should be permitted to elect to apply the amendments in this proposed Update to those collateralized financing entities that exist at the date of adoption? Do you agree that a reporting entity that consolidates for the first time a collateralized financing entity should have an option to not apply the amendments in this proposed Update?

MBA’s Response: MBA agrees, but see general comment above titled *MBA Disagrees With Portions of the Proposed Update*.

Question 3: Should the decision to apply the proposed amendments be an accounting policy decision or a decision to be applied to individual collateralized financing entities? Please explain.

MBA’s Response: The decision to apply the proposed amendments should be on an individual collateralized financing entity basis. Frequently, a reporting entity will be the Primary Beneficiary of a variety of VIEs, and, consistent with MBA’s recommendation in general comment above titled *MBA Disagrees With Portions of the Proposed Update*, whether to use fair value of assets to value liabilities or the fair value of liabilities to value assets will depend on which measure would be highest in the fair value hierarchy.

Question 4: The proposed amendments require that a reporting entity allocate the calculated value to the individual financial liabilities on a reasonable and consistent basis using a methodology appropriate in the circumstances. For preparers, is additional allocation guidance necessary? If yes, what methods should be used to allocate the calculated value of the financial liabilities to the individual financial liabilities?

MBA's Response: No additional guidance is deemed necessary.

Question 5: For users, would disclosures about the method used to allocate the fair value of the financial assets to the individual liabilities and the value of the beneficial interests retained by the reporting entity provide decision-useful information?

MBA's Response: N/A.

Question 6: Do you agree that the proposed amendments should be applied using a modified retrospective approach, with the option to apply the proposed amendments retrospectively for reporting entities that have previously measured the financial assets and financial liabilities of the collateralized financing entity at fair value? If not, please explain why.

MBA's Response: MBA generally agrees with the transition rules, but believes the application commencing with years beginning after December 15, 2013 is a bit aggressive. We recommend postponement of the effective date by one year, with early adoption being permitted.

Question 7: Do you agree that early adoption of the proposed amendments should be permitted? If not, please explain why.

MBA's Response: MBA agrees.

Question 8: The proposed amendments would apply to public and nonpublic entities. Should the proposed amendments be different for nonpublic entities? If so, please describe how and why the requirements should be different.

MBA's Response: MBA believes the amendments should apply to public and nonpublic entities.

Question 9: For preparers, how much time would be needed to implement the proposed amendments?

MBA's Response: See MBA's response to question 6 above.

Question 10: For preparers, what costs do you expect to incur as a result of implementing the proposed amendments?

MBA's Response: MBA believes the primary cost will be the manual re-valuations, on a VIE-by-VIE and quarter-by-quarter basis. Further, outside audit costs will rise during the year of implementation as the modified retro calculations will require audit testing. For reporting entities with a significant number of consolidated VIEs, the time and cost could be high. MBA further points out that the implementation cost could be significantly reduced if FASB writes the final rule to give reporting entities the opportunity to determine the fair value of VIE assets based on the fair value of VIE

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liabilities or vice versa, depending on the measure that is highest in the fair value hierarchy.