

STRUCTURED FINANCE REPORT

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FIN 46 Update

Having completed the process of printing the enclosed Structured Finance Report on May 14, 2003, we noted that the FIN 46 Article, which was finalized three weeks ago, has already been dated by two significant developments. This short supplement describes those developments.

First, at the recent Standard & Poor's conference in Orlando, Florida, Greg Coleman of the Office of the Comptroller of the Currency indicated that the federal regulators are drafting some form of temporary relief to mitigate to some degree the adverse impact of FIN 46 on regulatory capital requirements for banks associated with their conduits. It is currently expected that the relief will not affect the leverage rules. While the proposals do have to go through an approval process that may give rise to delays in implementation, the current expectation is that this relief will be in place by the end of the second quarter of 2003 and would extend through the first quarter of 2004. If this relief is forthcoming on a timely basis, it will give banks some breathing room to put alternative arrangements in place or to lobby for more permanent relief.

Second, on April 30, 2003, the FASB released a summary of preliminary decisions that have been made in connection with its current project to revise Statement of Financial Accounting Standards No. 140 ("Statement 140") to, among other things, redefine the requirements that must be met by qualified special purpose entities ("QSPEs"). These preliminary decisions are not necessarily final; an exposure draft of the amendments to Statement 140 is now expected to be released for comments in late May or early June. Comments will be due by July 31, 2003, which will be followed by a public roundtable discussion. However, these preliminary decisions are helpful insofar as they indicate the direction in which the FASB is leaning. The preliminary decisions are said to include the following:

- (a) For any public entity, the final amendments to Statement 140 will be effective at the beginning of the first fiscal quarter of such entity after the final amendment is issued;
- (b) For any private entity, the final amendments to Statement 140 will be effective at the end of the first fiscal year of such entity after the final amendment is issued;
- (c) Transition provisions like those in paragraph 25 of Statement 140 will apply (i.e., the new rules will not apply to existing QSPEs that do not issue new beneficial interests or receive new assets after the effective date unless certain specified circumstances exist);

- (d) The requirement of paragraph 9(a) of Statement 140 for derecognition by the transferor of transferred assets (i.e. balance sheet sale treatment) will be met only if the assets would be beyond the reach of a bankruptcy trustee or other receiver for: (i) the transferor or (ii) any other consolidated affiliate of the transferor that is not itself a special purpose entity designed to make remote the possibility that it would enter bankruptcy or other receivership proceeding;
- (e) An entity will not be a QSPE if it holds assets without contractual maturities that occur prior to the end of the planned life of the entity unless the governing documents of the entity include a prescribed date of sale of the asset prior to the end of planned life of the entity;
- (f) QSPEs cannot enter into total return swaps with the transferor, its affiliates or its agents; and
- (g) Where reissuance of beneficial interests by an entity is required, the entity will qualify as a QSPE only if:
 - (i) the assets held by it are limited to those that provide additional cash or other assets to make contracted payments to holders of beneficial interests in the transferred assets that the QSPE holds (like liquidity commitments);
 - (ii) the party obligated to provide the additional cash or other assets is not the transferor, its affiliates or its agents;
 - (iii) no single party (including its affiliates and agents) can be obligated to provide more than half of the additional cash or assets;
 - (iv) no party (including affiliates and agents of such party) obligated to provide additional cash or assets can make decisions about reissuing beneficial interests; provided that such party may make decisions that are entirely specified and significantly limited at the inception of the QSPE and cannot be changed except by a majority vote of beneficial interest holders other than the transferor or the party in question; and
 - (v) no party (including affiliates or agents of such party) obligated to provide additional cash or assets can hold beneficial interests that are not the most senior in priority.

We hope this update will render the inaugural issue of the Structured Finance Report even more useful to the reader.

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