



American Securitization Forum (ASF)
Commercial Mortgage Securities Association (CMSA)
Mortgage Bankers Association (MBA)
National Association of Realtors (NAR)
The Real Estate Roundtable (RER)
Securities Industry and Financial Markets Association (SIFMA)

CAPITAL CONSORTIUM TALKING POINTS RE:

FASB PROJECT TO REVISE FAS 140 AND FIN 46(R)

The President's Working Group on Financial Markets and various individual federal agencies have moved vigorously to respond to the disruptions in the credit and capital markets, attempting to mitigate impacts on consumers and the broader economy. The Capital Consortium¹ applauds the government's timely and creative response in these difficult times. The organizations in the Consortium have tried to provide constructive market perspective and other input in connection with many of these initiatives and will continue to do so.

While speedy and decisive actions have been beneficial in many areas, the Consortium believes that there is one area where pressure for prompt action may have serious unintended consequences. The area of concern is accounting policy relating to securitization. Responding to a request from the Chief Accountant of the Securities and Exchange Commission, the Financial Accounting Standards Board (FASB) has accelerated the pace and expanded the scope of its long-running deliberations on securitization accounting, with a goal of adopting final rule changes by the end of this year, to be applied at the beginning of next year.

FASB has reached tentative decisions in its fast-tracked deliberations that are likely to bring sweeping changes to securitization accounting, with dramatic direct and indirect consequences for the economy, the capital markets and consumers:

- Banks, finance companies and other entities (including possibly the GSEs) that currently do not consolidate the issuing entities used in securitizations may be required to consolidate some or all of those entities. The affected transactions may include many garden variety transactions (such as mortgage loan, credit card, student loan and retail auto loan securitizations).
- These changes affect large markets that provide a substantial funding for U.S. business and consumers. As of December 31, 2007, the aggregate outstanding balance of potentially affected transactions included:
 - \$7,210.3 billion mortgage-related securities;²

¹ The Capital Consortium is a federation of six financial services industry organizations—the American Securitization Forum (ASF), the Commercial Mortgage Securities Association (CMSA), the Mortgage Bankers Association (MBA), the National Association of Realtors (NAR), the Real Estate Roundtable (RER), and the Securities Industry and Financial Markets Association (SIFMA)—dedicated to ensuring and enhancing the availability of capital for commercial real estate finance. Individual Consortium member organizations also represent broader segments of the securitization and structured credit markets, including the markets for mortgage-backed and asset-backed securities.

² The source of all the following market data is SIFMA.



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- \$2,472.4 billion other asset-backed securities³ (excluding asset-backed commercial paper); and
- \$816.3 billion asset-backed commercial paper.
- We cannot presently estimate which or how many of these transactions would be affected by the proposed changes, but consolidation of even a significant fraction would be a momentous change, with the potential to substantially tighten credit for consumers and businesses.
- Consolidation of securitization SPEs is likely to swell the balance sheets of the affected entities, impairing financial ratios and financial covenant performance and regulatory capital tests.
- The abrupt swelling of balance sheets is likely to bring a new chill to credit markets that may be just beginning to thaw. Among other chilling factors:
 - regulated entities will face capital constraints; and
 - both regulated and unregulated entities will be distracted (and capital raising efforts complicated) by explaining the dramatic changes in their financial statements to investors and lenders; and
 - in some cases, regulated and unregulated entities will be further distracted by the need to seek waivers for financial covenant breaches triggered by accounting changes in an environment where lenders may be unreceptive to these requests.
- Policy changes without international convergence may create competitive imbalances.

FASB has had multiple projects relating to securitization accounting over the last several years. There are reasons why these issues have taken a long time to resolve. Among other things: the subject transactions are inherently complex; the market is relatively young and has evolved rapidly; and U.S. and international accounting policy makers have historically taken different approaches in this area, which are the subject of an international convergence project. Haste for a response to the current market issues will be counterproductive if it keeps FASB and other policy makers from giving full consideration to accounting policy options, direct and indirect consequences of proposed policy changes and possible compensating adjustments to bank capital rules and other regulations.

³ This included \$585.6 billion backed by home equity loans, \$347.8 billion backed by credit card loans, \$243.9 billion backed by student loans, \$198.5 billion backed by automobile loans, \$46.2 billion backed by equipment leases \$26.9 billion backed by manufactured housing and \$1,023.5 billion backed by miscellaneous other receivables. The \$1,023.5 billion miscellaneous category includes collateralized debt obligations (CDOs) and numerous smaller asset classes. The assets underlying the CDOs include other asset-backed securities (CDOs of ABS), some or all of which might be viewed as double counting with other ABS outstandings. The available data do not permit us to determine the amount of any such double counting.



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While many market participants (including many members of Consortium organizations) believe that changes in disclosure and/or financial reporting by securitizers are needed, that does not mean that an abrupt swing towards consolidating everything is the right response. It is important to remember that too much consolidation of SPEs can be just as confusing to users of financial statements as too little. As one important example: if the current FASB plans were adopted and another major player in the securitization markets approached insolvency, efforts by regulators and potential purchasers to analyze the entity's balance sheet could be severely complicated by the presence of billions of dollars of assets that are in securitization trusts which the entity does not own.

More nuanced approaches should be considered, in particular approaches that (1) enable users of financial statements to differentiate between assets that are truly controlled by the consolidated reporting entity vs. those that have been isolated from that entity and its creditors and (2) appropriately recognize differences among the prevailing structures used for various asset classes. For instance, for several years some Consortium organizations have advocated a linked presentation⁴ as a concept with great potential as part of the final resolution of the issues surrounding securitization accounting. The Consortium supports full deliberation of a linked presentation as part of the current round of accounting policy changes. We understand that FASB's preliminary decisions relating to the policy changes scheduled for the end of this year exclude linked presentation except as incremental footnote disclosure, in large part because the year end deadline does not allow time for all the ancillary, but nevertheless important, issues.

We do not think that a year-end deadline for final rules is a necessary response to current market conditions. A more measured and realistic but still aggressive deadline (such as January 1, 2010) that permits full deliberation of policy alternatives (including the linked presentation) and a public comment period commensurate with the importance of the changes under consideration will be better for the markets in both the short and long-term. In the interim, the Consortium supports the supplemental disclosures recommended by various bodies in response to the recent market disruptions, which many reporting entities have begun to provide.

The last time that FASB acted with this kind of haste on consolidation policy, the result was FASB Interpretation No. 46, which was so flawed as to require immediate revision and a series of staff interpretations and is again being considered for substantial revision as part of this project. The markets and the economy will be much better served by allowing a little more time for accounting policy makers and affected constituents to fully consider the available options and work out the details for a smooth transition process.

⁴ Under the linked presentation, the liabilities issued in securitizations would be shown on the asset side of the balance sheet, as a deduction from the amount of securitized assets, within a single caption. Parallel presentations would apply on the income and cash flow statements. The ASF suggested a linked presentation in a December 2003 comment letter to FASB relating to the project that resulted in the adoption of FASB Interpretation No. 46.