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Mr. Jackson M. Day
Practice Fellow
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
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RE: Preliminary Draft of A Guide to Implementation of Statement 125 on Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities

Dear Mr. Day:

The Bond Market Association (the "Association")I appreciates the opportunity to comment on the preliminary draft of the proposed FASB Special Report, *A Guide to Implementation of Statement 125 on Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. As you are probably aware, the Association's members have been, and continue to be, highly interested in Statement 125 due to its impact on the asset securitization and funding markets.

We fully appreciate FASB's desire to provide guidance in response to the questions that have been raised regarding this complex and comprehensive standard. However, we question whether it is the appropriate time for FASB to issue implementation guidance regarding Statement 125 while a number of significant issues are currently under consideration by the Board for inclusion as part of an interpretation or amendment of Statement 125.

If, however, FASB does decide to proceed with issuing guidance at this time, we believe that questions 8, 9, and 37 should be added to the list of anticipated affected questions to which FASB staff should add cautionary language due to anticipated changes to be made to the Statement.

Our comments on some of the specific questions and answers included in the preliminary draft follow.

Control Criteria: Isolation

Question 12:

We note that currently there is no GAAP that addresses the accounting for stand-alone financial statements. We are concerned, therefore, that this answer does not constitute an interpretation of existing GAAP but rather represents the introduction of entirely new GAAP for stand-alone financial statements. Accordingly, we believe that the most

appropriate way to address the issue of inter-affiliate transfers is through the application of the disclosure requirements of Statement 57.

If, however, FASB believes that a discussion of the accounting for stand-alone financial statements is still appropriate, our recommendation would be to adopt an approach whereby if a transfer by an entity to an unaffiliated third party would be accounted for as a sale, then the exact same transfer to an affiliated entity should also be accounted for as a sale.

Notwithstanding the above, we believe that it would be helpful if the language of this answer was clarified. The requirement to satisfy the legal isolation test of paragraph 9(a), combined with the audit guidance promulgated by SAS 73, seems to imply that "would" level opinions, addressing both the "true sale" *and* substantive non-consolidation in bankruptcy issues, are required for an inter-affiliate sale to be recorded as such. However, we note that the requirement to obtain an opinion regarding substantive non-consolidation would be difficult for most inter-affiliate asset transfers, thus making it difficult for most inter-affiliate asset transfers to be accounted for as sales in stand-alone financial statements. Accordingly, we request that FASB clarify that a legal opinion would be required only with respect to "true sale" issues for these transactions, and would not be required for the substantive non-consolidation issues. In addition, we believe it would be helpful if FASB clarified that a legal opinion would not be required for inter-affiliate transfers where there is no continuing involvement on the part of the transferor.

Control Criteria: Conditions that Constrain a Transferee

Question 13:

We interpret this response as follows: assume that a transferee does not have the ability to sell a financial asset, such as a bond, that has been transferred to it. However, the transferee does have the ability to pledge the bond, and could obtain 80% of the value of the bond in cash through the pledge. The transferee would be considered to have obtained most of the economic benefit of the asset and the transfer could be accounted for as a sale (assuming all other sale criteria are met). If our interpretation is not correct, perhaps FASB could provide guidance in the answer to this question as to what is meant by "most" of the cash flows and economic benefit of the asset.

We do not interpret this question as changing the accounting for funding market transactions (e.g., repos and securities lending transactions), where a transferee may have the right to pledge or exchange an asset, but is still required to pass interest or dividend payments received in respect of the asset back to the transferor.

In addition, we are concerned because we believe that this response introduces a new approach to determining whether a transaction should be accounted for as a sale or a financing – an economic analysis based on who is entitled to cash flows from the assets. We believe this is inconsistent with the approach adopted by Statement 125, which

directs one to look at factors surrounding control over the asset, rather than the rewards of owning that asset.

Question 15:

In order to expand on the guidance in Statement 125, we believe it would be helpful if FASB could provide specific examples of non-transferor imposed constraints that would preclude sale accounting. In addition, we believe that routine servicing does not equate to continuing involvement which would preclude sale accounting in the event of non-transferor imposed constraining conditions, and we believe it would be helpful if FASB would state that explicitly.

Furthermore, although we believe that the answer is consistent with the guidance contained in Statement 125, we urge FASB to reconsider this guidance in its proposed amendment or interpretation of the Statement. We believe that a constraint that is not imposed by the transferor, and which the transferor may or may not be aware of, should not preclude sale accounting, even if the transferor has some continuing involvement with the transferred asset. For example, a transferee of financial assets may be unable to sell transferred assets as a result of a bankruptcy proceeding, or a restriction imposed by a regulatory authority. Neither of these situations would appear to be relevant to whether a transferor has relinquished control over the asset, and in fact would not impact the transferor's accounting absent its continuing involvement. However, if the transferor did have some continuing involvement with the asset (e.g., the transferor continues to service the asset), then the transferor would, as a result, be unable to account for the transfer as a sale. Thus, the existing guidance seems to conflate the concepts of control and continuing involvement, such that in the event of a non-transferor imposed constraint, sale accounting is precluded.

Control Criteria: Qualifying Special-Purpose Entities

Question 21:

We suggest that consideration be given by FASB to a possible amendment of Statement 125 whereby the consolidation rules regarding qualifying special purpose entities would apply equally to sponsors as well as transferors. We believe that the existing approach is somewhat inconsistent with the idea under Statement 125 that the order in which the components of a transaction are entered into should be irrelevant.

Control Criteria: Effective Control

Question 27:

We suggest that you amend the wording at the end of the first sentence to read "existing, **or specified** securities" to incorporate the concept of TBA GNMA rolls, where the securities are usually existing but not yet allocated to the transaction.

Measurement of Assets and Liabilities Upon Completion of a Transfer

Question 45:

The cross-reference in the third sentence in the answer should be to "Question 43", not Question 65.

Servicing Assets and Servicing Liabilities: Adequate Compensation

Question 49:

We note that this question and answer discusses valuation issues that are not unique to servicing, and therefore question whether it provides any additional guidance to the practitioner. Should FASB decide to retain this question and answer, however, we believe the fact pattern in the question should be clarified to specify when the servicer receives a third party offer to purchase the servicing rights (i.e., before or after financial statements are issued).

Servicing Assets and Servicing Liabilities: Contractually Specified Servicing Fees

Question 56:

We find the answer to this question not entirely clear, and believe it should be clarified by deleting the first sentence of the answer. Alternatively, the phrase "an interest only strip, or both" should be deleted from the first sentence of the answer. We believe this change would make the response clearer as well as more consistent with the guidance in Statement 125 and the answer to Question 47.

Servicing-Other

Questions 57 and 58:

The answers to these questions are particularly problematic in the context of loan participations. In loan participation relationships, servicing responsibilities are embedded in the lead bank-participant relationship, and are not separable into distinct relationships as is the case in the asset securitization markets. We believe the application of this guidance to loan participations is therefore impracticable, and suggest that they be excluded from the scope of this issue.

Secured Borrowings and Collateral

Questions 73, 74 and 75:

We suggest FASB clarify the answers to these questions by providing examples of the transactions contemplated, with explicit, descriptive language (e.g., Party A, the transferor, transfers security ABC to Party B, the transferee, in exchange for security

XYZ) and with the appropriate journal entries for the transaction from both the transferor's and transferee's perspective.

With respect to Question 74, as with our comments regarding Question 13, we are concerned that the answer makes reference to cash inflows that are the primary economic benefit of the asset as being a determinative factor in whether or not a transferee should record collateral on its balance sheet.

Question 79:

Although we agree with the answer to the question posed, we believe that FASB should consider providing more guidance with respect to other situations that may arise when a transferee has recorded collateral on its balance sheet pursuant to paragraph 15. For example, it would be helpful to clarify the accounting treatment where a transferee does not sell the collateral but keeps it in a trading account and marks it to market, or where a transferee sells the collateral but has an identical security in its own inventory that it can use to satisfy its obligation to return the collateral to the transferor.

Question 80:

We note that there is no Question 80.

We would be pleased to discuss further any of our comments on the draft guidance or answer any questions you may have concerning the contents of this letter. Please feel free to contact Patricia Brigantic, Vice President and Associate General Counsel and principal staff advisor to the Accounting Policy Committee at The Bond Market Association, at 212.440.9454, or Esther Mills, Accounting Policy Committee Chair, at 212.357.8437.

Very truly yours,

s/s Esther Mills

Esther Mills
Goldman, Sachs & Co.
Chair, Accounting Policy Committee

s/s Patricia Brigantic

Patricia Brigantic
Vice President & Associate General Counsel
Principal Staff Advisor, Accounting Policy Committee

cc: James Johnson, *Deloitte & Touche*, Special Accounting Advisors to
The Bond Market Association

FOOTNOTES

I The Bond Market Association represents approximately 200 securities firms and banks that underwrite, trade and sell debt securities, and participate in the repurchase agreement and securities lending markets, both domestically and internationally. This letter was prepared with the participation of the Association's Accounting Policy Committee, which is comprised of in-house accounting professionals at the Association's member firms, as well as the leadership of the Funding Division and the Mortgage and Asset-Backed Securities Division, representing business professionals active in the funding and mortgage and asset securitization markets, respectively. More information about the Association and its members can be found at its internet website www.bondmarkets.com.