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Mr. Jackson M. Day
Practice Fellow
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

**Re: Preliminary Draft of A Guide to Implementation of Statement 125 on
Accounting for Transfers and Servicing of Financial Assets and Extinguishments of
Liabilities - Second Edition**

Dear Mr. Day:

We are writing in response to 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 - Second Edition*. The members of The Bond Market Association (the "Association")¹ continue to be highly interested in Statement 125 due to its impact on the asset securitization and funding markets, and the Association appreciates the opportunity to comment on the draft and participate in this process.

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

Scope

Question 9:

We acknowledge the fact that certain derivative financial instruments, such as forwards and swaps, have the potential to be either an asset or a liability, depending on future market movements. However, we note that established GAAP is that contracts in a gain position should be reported as assets and contracts in a loss position should be reported as liabilities. Thus, at any point in time, these types of contracts are considered *either* an asset *or* a liability based on the economics of the contract at that point in time. Accordingly, we believe that the provisions of Statement 125 should be applied based on whether the contract is an asset or a liability at a single point in time, i.e., the point of sale, rather than require an evaluation of the potential future position of that contract. If the transferor retains the risk of the contract converting from an asset to a liability, then it should be viewed as a risk that is retained by the transferor. Under these circumstances, assuming that legal isolation of the asset is achieved, the transferor should record a liability for the risk incurred as part of the proceeds of the transfer and account for this liability appropriately in subsequent periods.

Control Criteria - Isolation

Question 12:

It is unclear to us what level of legal assurance would be required for the stand-alone financial statements of a transferor that has entered into a sale of financial assets with a sister affiliate, if the transferor has continuing involvement with the asset. We note that if a legal opinion is required (as is suggested by the parenthetical phrase in the first sentence of the answer), which must attest that the transferred assets would be beyond the reach of the powers of a bankruptcy trustee or other receiver for the transferor or *any of its affiliates* as specified in paragraph 23 of Statement 125, it will be difficult for a transferor to achieve sale accounting for a transfer to a sister affiliate.

Conditions that Constrain a Transferee

Question 14:

We continue to believe that a constraint that is not imposed by the transferor, regardless of whether the transferor is aware of it, should not preclude sale accounting, even if the transferor has some continuing involvement with the transferred asset. With respect to the guidance in this question, however, we note that it is entirely possible for a transferor who has continuing involvement to be unaware of an other-than-transferor-imposed constraint on a transferred asset, and we believe that it should be considered equally unreasonable for sale accounting to be precluded under these circumstances. Finally, it is unclear how the phrase "if [the transferor] has no way of knowing that the transferee is constrained" should be applied in practice, and in particular, whether this places any burden on the transferor to perform any type of due diligence (and if so, to what extent). We recommend that the phrase "has no way of knowing" be replaced with the phrase "is unaware."

Measurement of Assets and Liabilities Upon Completion of a Transfer

Question 28:

We acknowledge the fact that Statement 125 is clear in requiring a cash reserve account to be treated as a retained interest. However, we believe that the cash is separate and distinct from the transfer of assets and not a retained interest in the transferred assets. Therefore, we request that the FASB reconsider this point in its deliberations on the proposed amendment to Statement 125.

Question 29:

We believe that specification of an appropriate fair value methodology is outside the scope of Statement 125. The accounting literature frequently acknowledges that a variety of techniques exist to determine fair value, and a particular method is not typically specified. We recommend that FASB revise the question and answer to state that the

objective in measuring credit enhancements is to determine fair value, that modeling is frequently used, and that the methodology that most appropriately captures the economics of the credit enhancement should be used.

Questions 34, 35, 36, and 37:

We believe that these questions could potentially affect the subsequent accounting for retained interests, which we believe is outside the scope of Statement 125, as Statement 125 addresses the subsequent measurement only of servicing assets and liabilities, and retained interests with prepayment risk. The responses seem to suggest a type of equity method of accounting for retained interests, or "look-through" accounting, which would ignore any changes to the characteristics of the assets that were transferred in. However, we note that Statement 125 indicates that a retained interest can take a different form from the original asset that was transferred, and that the new form can impact the accounting for the retained interest. For example, a retained interest such as a servicing asset is not accounted for in the same manner as the original asset. Therefore, we do not understand why a retained interest which is in the form of a structured note should be accounted for in the same manner as the original assets that were transferred.

Question 37:

It is not clear to us why the initial investment in the beneficial interests would not be \$170, representing the total of the fair value of the equity security and the debt security as of the date of transfer to the QSPE.

Secured Borrowings and Collateral

Question 51:

We suggest FASB clarify the answer to this question by providing a specific example and journal entries.

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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 Senior 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
Goldman Sachs & Co.
Chair, Accounting Policy Committee

s/s Patricia Brigantic
Vice President & Senior Associate General Counsel
The Bond Market Association

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

FOOTNOTES

1 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. More information about the Association and its members can be found at its internet website www.bondmarkets.com.