

*Capital Markets  
Accounting Developments  
Advisory 2004-02*

*January 23, 2004*

**Overview**

At the FASB meeting on January 21, 2004, the Board was prepared to discuss transactions in which an undivided interest in financial assets might be transferred without the use of a QSPE. The Board had several examples prepared by the staff.

In preparation for the meeting, several members of the staff and a couple of Board members met with representatives of the FDIC to discuss their comments regarding the increased cost of requiring transfers of loan participations be made through a QSPE.

**Right of Offset**

During the FASB staff's discussions with the FDIC, they became aware of a right of set off that exists at depository institutions. A borrower in a lending relationship with a depository bank may also have a deposit with that bank. The deposit would be subject to the right of offset in the case of either the borrower/depositor's bankruptcy or the bank's receivership.

The FASB staff was lead to believe these rights were widespread in practice. The FASB staff also understands that transferors were often able to obtain legal opinions concluding that the transfer of a loan or other financial asset, where this right of offset exists, met the isolation test of paragraph 9(a). The FASB staff and Board members were very troubled by this news and asked the FDIC if there was any way to legally defeat the right of offset provisions. The FDIC responded that they would have to conduct additional research before answering that question.

## **Next Steps**

The Board decided to defer their discussion on this issue until the Staff could gather more facts. The Board is also awaiting the FDIC's response to the questions that were posed, to further assess whether even a QSPE structure would be sufficient to defeat a right of offset.

One Board member emphasized the need for a transferor and legal counsel to evaluate any right of offset to ensure the transfer of assets meets the isolation criteria of paragraph 9(a).

## **Timetable**

There was no timeline established for future discussions of this issue. The staff suggested that they would come back to the Board when they had gathered sufficient information from the FDIC and others to resolve this issue.

One Board member asked the audience if they had any information that might help them better understand this issue but did not get any response. We understand that the Board would be interested in hearing from any knowledgeable, interested parties that may be able to shed some light on this subject.

A recording of The Board meeting is now available via webcast, free of charge at the following website: <http://www.trz.cc/fasb/archive.html>.

## **Questions**

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