FEDERAL RESERVE BANK *of* NEW YORK

33 LIBERTY STREET, NEW YORK, NY 10045-0001

PATRICIA SELVAGGI
STATISTICS OFFICER

April 5, 2010

To: The Officer Responsible for Filing the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations:

Enclosed are the form and instructions for the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y-7N) for the quarter ending March 31, 2010. There are no changes to the FR Y-7N report forms for the March 31, 2010 report date. However, several clarifications have been made to the FR Y-7N instructions. Please refer to the attachment included with this letter for further details on the changes impacting the March 2010 report.

Foreign Banking Organizations file the FR Y-7N quarterly for each U.S. nonbank subsidiary with total assets equal to or greater than $1 billion or with total off-balance-sheet activity equal to or greater than $5 billion. Foreign Banking Organizations file the detailed FR Y-7N annually for each U.S. nonbank subsidiary that does not meet the criteria to file quarterly but has total assets equal to or greater than $250 million (and less than $1 billion). Foreign Banking Organizations file the abbreviated FR Y-7NS annually for each nonbank subsidiary that does not meet the criteria to file the detailed report, but has total assets equal to or greater than $50 million (and less than $250 million). The FR Y-7N/FR Y-7NS must be submitted for each legal entity subject to reporting requirements. Therefore, consolidation of individual entities is not permitted.

FASB Statements No. 166 and 167

In June 2009, the FASB issued Statement No. 166, *Accounting for Transfers of Financial Assets* (FAS 166), and Statement No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), which change the way entities account for securitizations and special purpose entities. FAS 166 (now codified in FASB Accounting Standards Codification (ASC) Topic 860, Transfers and Servicing) revises FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, by eliminating the concept of a "qualifying special-purpose entity," creating the concept of a "participating interest" (which is discussed more fully in the following sections), changing the requirements for derecognizing financial assets, and requiring additional disclosures. FAS 167 (now codified in FASB ASC Topic 810, Consolidation) revises FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities,* by changing how a nonbank or other company determines when an entity that is insufficiently capitalized or is not controlled through voting or similar rights, i.e., a "variable

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interest entity" (VIE), should be consolidated. Under FAS 167, a nonbank subsidiary must perform a qualitative assessment to determine whether its variable interest or interests give it a controlling financial interest in a VIE. If a nonbank's variable interest or interests provide it with the power to direct the most significant activities of the VIE, and the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE, the nonbank is the primary beneficiary of, and therefore must consolidate, the VIE.

Both FAS 166 and FAS 167 take effect as of the beginning of each nonbank's first annual reporting period that begins after November 15, 2009, for interim periods therein, and for interim and annual reporting periods thereafter (i.e., as of January 1, 2010, for nonbanks with a calendar year fiscal year). Earlier application is prohibited. Nonbanks are expected to adopt FAS 166 and FAS 167 for FR Y-7N reporting purposes in accordance with the effective date of these two standards.

The assets and liabilities of consolidated VIEs should be reported on the FR Y-7N balance sheet (Schedule BS) in the balance sheet category appropriate to the asset or liability. Because Schedule BS does not enable a nonbank to present separately (a) the assets of a consolidated VIE that can be used only to settle obligations of the consolidated VIE and (b) the liabilities of a consolidated VIE for which creditors do not have recourse to the general credit of the primary beneficiary, a nonbank that consolidates a VIE may wish to report on such assets and liabilities in the FR Y-7N's "Notes to the Financial Statements".

Accounting for Loan Participations under FAS 166

FAS 166 (FASB ASC Topic 860) has modified the criteria that must be met in order for a transfer of a portion of a financial asset, such as a loan participation, to qualify for sale accounting. These changes apply to transfers of loan participations on or after the effective date of FAS 166 (which is discussed above), including advances under lines of credit that are transferred on or after the effective date of FAS 166 even if the line of credit agreements were entered into before the effective date of FAS 166. Therefore, nonbanks with a calendar year fiscal year must account for transfers of loan participations on or after January 1, 2010, in accordance with FAS 166. In general, loan participations transferred before the effective date of FAS 166 (January 1, 2010, for calendar year nonbanks) are not affected by this new accounting standard and pre-FAS 166 participations that were properly accounted for as sales under FASB Statement No. 140 will continue to be reported as having been sold.

Under FAS 166, if a transfer of a portion of an entire financial asset meets the definition of a "participating interest", then the transferor (normally the lead lender) must evaluate whether the transfer meets all of the conditions in this accounting standard to qualify for sale accounting. (In summary, these conditions are the isolation of the transferred assets from the transferor, the transferee's right to pledge or exchange the assets received, and the transferor's lack of effective control over the transferred assets.) In general, in order for a loan participation, whether retained by the lead lender or transferred to another party, to meet the definition of a participating interest in FAS 166, it must have all of the following characteristics:

- It must represent a proportionate (pro rata) ownership interest in an entire financial asset;

- All cash flows received from the entire financial asset, except any cash flows allocated as compensation for servicing or other services performed (which must not be subordinated and must not significantly exceed an amount that would fairly compensate a substitute service provider should one be required), must be divided proportionately among the participating interest holders in an amount equal to their share of ownership;

- The rights of each participating interest holder (including the lead lender) must have the same priority, no interest is subordinated to another interest, and no participating interest holder has recourse to the lead lender or another participating interest holder other than standard representations and warranties and ongoing contractual servicing and administration obligations; and

- No party has the right to pledge or exchange the entire financial asset unless all participating interest holders agree to do so.

If a transfer of a portion of a financial asset does not meet the definition of a participating interest, both the lead lender transferring the nonqualifying participation and the party acquiring the nonqualifying participation must account for the transaction as a secured borrowing with a pledge of collateral.

Under FAS 166, so-called “last-in, first-out” (LIFO) participations in which all principal cash flows collected on the loan are paid first to the party acquiring the participation do not meet the definition of a participating interest. Similarly, so-called “first-in, first-out” (FIFO) participations in which all principal cash flows collected on the loan are paid first to the lead lender do not meet the definition of a participation interest. As a result, neither LIFO nor FIFO participations transferred after the effective date of FAS 166 will qualify for sale accounting and instead must be reported as secured borrowings.

The participating interest definition in FAS 166 also applies to transfers of government-guaranteed portions of loans, such as those guaranteed by the Small Business Administration (SBA). In this regard, if a nonbank transfers the guaranteed portion of an SBA loan at a premium, the "seller" is obligated by the SBA to refund the premium to the “purchaser” if the loan is repaid within 90 days of the transfer. Under FAS 166, this premium refund obligation is a form of recourse, which means that the transferred guaranteed portion of the loan does not meet the definition of a "participating interest" for the 90-day period that the premium refund obligation exists. As a result, the transfer must be accounted for as a secured borrowing during this period. After the 90-day period, assuming the transferred guaranteed portion and the retained unguaranteed portion of the SBA loan now meet the definition of a "participating interest”, the transfer of the guaranteed portion can be accounted for as a sale if all of the conditions for sale accounting in FAS 166 area met. In contrast, if the guaranteed portion of the SBA loan is transferred at par in a so-called “par sale” in which the “seller” agrees to pass interest through to the “purchaser” at less than the contractual interest rate and the spread between the contractual rate and the pass-through interest rate significantly exceeds an amount that would fairly compensate a substitute servicer, the excess spread is viewed as an interest-only strip. The existence of this interest-only strip results in a disproportionate sharing of the cash flows on the entire SBA loan, which means that the transferred guaranteed portion and the retained unguaranteed portion of the SBA loan do not meet the definition of a "participating interest", which precludes sale accounting. Instead, the transfer of the guaranteed portion must be accounted for as a secured borrowing.

Upon the completion of a transfer of a participating interest that satisfies the conditions to be accounted for as a sale, the transferor (seller) must allocate the previous carrying amount of the entire financial asset between the participating interests sold and any that are retained based on their relative fair values at the transfer date, derecognize the participating interests sold, recognize and initially measure at fair value servicing assets (or servicing liabilities) and any other assets obtained and liabilities incurred in the sale, recognize in earnings any gain or loss on the sale, and report any retained participating interests as the difference between the previous carrying amount of the entire financial asset and the amount derecognized.

As mentioned above, when a portion of a financial asset is transferred, but the transferred portion does not meet the definition of a participating interest, the transaction must be reported as a secured borrowing with a pledge of collateral. In this situation, because the transferred loan participation does not qualify for sale accounting under FAS 166, the nonbank lead lender must continue to report the transferred participation (as well as the retained portion of the loan) as a loan asset on its balance sheet (Schedule BS), normally in item 3.a, “Loans and leases, net of unearned income”, and in the appropriate loan category in Schedule BS-A, Loans and Lease Financing Receivables. The nonbank lead lender should report the transferred loan participation as a secured borrowing on the balance sheet in Schedule BS, item 12, “Other borrowed money with a remaining maturity of one year or less” or item 13, “Other borrowed money with a remaining maturity of more than one year”.

From the standpoint of the nonbank that acquires the nonqualifying loan participation, it should normally report the participation in item 3.a, “Loans and leases, net of unearned income”, on the FR Y-7N balance sheet. For purposes of Schedule BS-A, Loans and Lease Financing Receivables, the nonqualifying participation should be reported in the loan category appropriate to the underlying loan, e.g., as a “commercial and industrial” loan in item 3 or as a “loan secured by real estate” in item 1 of Schedule BS-A.

Accounting Standards Codification

In June 2009, the FASB issued Statement No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles* (FAS 168), to establish the FASB Codification as the single source of authoritative nongovernmental U.S. generally accepted accounting principles (U.S. GAAP). The FASB Codification reorganizes existing U.S. accounting and reporting standards issued by the FASB and other related private-sector standard setters, and all guidance contained in the FASB Codification carries an equal

level of authority. All previously existing accounting standards documents are superseded as described in FAS 168. All other accounting literature not included in the FASB Codification is nonauthoritative. The FASB Codification can be accessed at http://asc.fasb.org/.
The FASB Codification is effective for interim and annual periods ending after September 15, 2009. Therefore, effective for the September 30, 2009, and subsequent FR Y-7N reports, references in the reporting instructions (including these Supplemental Instructions) to specific pre-Codification standards under U.S. GAAP (e.g., FASB Statements of Financial Accounting Standards, FASB Interpretations, Emerging Issues Task Force Issues, and Accounting Principles Board Opinions) should be understood to mean the corresponding reference in the FASB's Accounting Standards Codification.

Other-Than-Temporary Impairment

When the fair value of an investment is less than its cost basis, the impairment is either temporary or other-than-temporary. To determine whether the impairment is other-than-temporary, a nonbank subsidiary must apply other pertinent guidance such as paragraph 16 of FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*; FASB Staff Position (FSP) FAS 115-1 and FAS 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*; FSP FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*; paragraph 6 of Accounting Principles Board Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*; Emerging Issues Task Force (EITF) Issue No. 99-20, *Recognition of Interest Income and Impairment on Purchased Beneficial Interests and Beneficial Interests That Continue to Be Held by a Transferor in Securitized Financial Assets*; and FSP EITF 99-20-1, *Amendments to the Impairment Guidance of EITF Issue No. 99-20*.

On January 12, 2009, the FASB issued FSP EITF 99-20-1, *Amendments to the Impairment Guidance of EITF Issue No. 99-20*. This FSP amended EITF Issue No. 99-20 to align its impairment guidance with the guidance in paragraph 16 of FASB Statement No. 115 and related implementation guidance. The FSP is effective for "interim and annual reporting periods ending after December 15, 2008, and shall be applied prospectively. Retrospective application to a prior interim or annual reporting period is not permitted". All nonbank subsidiaries, both public *and* nonpublic, that hold beneficial interests that fall within the scope of EITF Issue No. 99-20 must adopt FSP EITF 99-20-1 for FR Y-7N reporting purposes in accordance with the FSP's effective date. Thus, both public and nonpublic nonbanks should have applied this FSP beginning in their December 31, 2008, reports. Nonbanks should not apply the guidance in this FSP to the September 30, 2008, or earlier reporting periods.

On April 9, 2009, the FASB issued FSP FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* (FSP FAS 115-2). This FSP amended the other-than-temporary impairment (OTTI) guidance in several standards (including FASB

Statement No. 115, FSP FAS 115-1 and FAS 124-1, and EITF Issue No. 99-20) that applies to investments in debt securities FSP FAS 115-2 does not apply to investments in securities that

meet the definition of an equity security in FASB Statement No. 115. Under FSP FAS 115-2, if a nonbank intends to sell a debt security or it is more likely than not that it will be required to sell the debt security before recovery of its amortized cost basis, an OTTI has occurred and the entire difference between the security's amortized cost basis and its fair value at the balance sheet date must be recognized in earnings. In these cases, the fair value of the debt security would become its new amortized cost basis. The FSP also provides that if the present value of cash flows expected to be collected on a debt security is less than its amortized cost basis, a credit loss exists. In this situation, if a nonbank does not intend to sell the security and it is not more likely than not that the nonbank will be required to sell the debt security before recovery of its amortized cost basis less any current-period credit loss, an OTTI has occurred. The amount of the total other-than-temporary impairment related to the credit loss must be recognized in earnings, but the amount of the total impairment related to other factors must be recognized in other comprehensive income, net of applicable taxes.

FSP FAS 115-2 is effective for interim and annual reporting periods ending after June 15, 2009. Early adoption of this FSP is permitted for periods ending after March 15, 2009, in accordance with the FSP's effective date and transition provisions. Nonbanks were expected to adopt FSP FAS 115-2 for FR Y-7N reporting purposes in accordance with the FSP's effective date.

For OTTI losses on held-to-maturity and available-for-sale debt securities that occur during the current calendar year-to-date reporting period, Nonbanks should report the total amount of such losses, the portion recognized in other comprehensive income (before income taxes). OTTI losses on held-to-maturity and available-for-sale debt securities that must be recognized in earnings should be included in item 6, of the FR Y-7N income statement (Schedule IS). OTTI losses that are to be recognized in other comprehensive income, net of applicable taxes, should be reported in item 5 of Schedule IS-A, Changes in Equity Capital, and included in item 18.d, "Accumulated other comprehensive income", on the FR Y-7N balance sheet (Schedule BS). For a held-to-maturity debt security on which the nonbank has recognized an OTTI loss related to factors other than credit loss in other comprehensive income, the nonbank should report the carrying value of the debt security, as defined in FSP FAS 115-2, in item 2.a of Schedule BS. Under the FSP, this carrying value should be the fair value of the debt security as of the date of the most recently recognized OTTI loss adjusted for subsequent accretion of the impairment loss related to factors other than credit loss.

Extended Net Operating Loss Carryback Period

The Business Assistance Act of 2009, which was enacted on November 6, 2009, permits banking organizations and other businesses, excluding those banking organizations that received capital from the U.S. Treasury under the Troubled Asset Relief Program, to elect a net operating loss carryback period of three, four, or five years instead of the usual carryback period of two years for any one tax year ending after December 31, 2007, and beginning before January 1, 2010. This extended carryback period applies to either the 2008 or 2009 tax year. The amount of the net operating loss that can be carried back to the fifth carryback year is limited to 50 percent of the available taxable income for that fifth year, but this limit does not apply to other carryback years.

Under GAAP, nonbanks may not record the effects of this tax change in their balance sheets and income statements for financial and regulatory reporting purposes until the period in which the law was enacted (i.e., the fourth quarter of 2009). Therefore, nonbanks should recognize the effects of this fourth quarter 2009 tax law change on their current and deferred tax assets and liabilities, including valuation allowances for deferred tax assets, in their FR Y-7N report for December 31, 2009. Nonbanks should not amend their FR Y-N report for prior quarters for the effects of the extended net operating loss carryback period.

In addition, any recognized income tax refund receivable resulting from a net operating loss carryback that remains outstanding as of March 31, 2010, should be reported in Schedule BS, item 7, “All other assets”, not in Schedule BS-M, item 3.c, “Net deferred tax assets”.

Measurement of Fair Values in Stressed Market Conditions

The valuation of various assets and liabilities on the balance sheet – including trading assets and liabilities, available-for-sale securities, loans held for sale, assets and liabilities accounted for under the fair value option (which is discussed in the following section), and foreclosed assets – involves the use of fair values. During recent market stress events, the fair values of some financial instruments and nonfinancial assets may decline.

Institutions are reminded that the objective of a fair value measurement is to determine the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the balance sheet date under current market conditions. An orderly transaction is a transaction that assumes exposure to the market for a period prior to the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities; it is not a forced transaction (e.g., a forced liquidation or distress sale). This fair value objective is generally applicable to all fair value measurements, whether or not a nonbank has early adopted FASB Statement No. 157, *Fair Value Measurements* (FAS 157), which is discussed in the following section.

On September 30, 2008, the SEC’s Office of the Chief Accountant and the FASB staff jointly issued clarifications that address several fair value measurement questions that have arisen in the current market environment (http://www.fasb.org/news/2008-FairValue.pdf). These clarifications are based on the fair value measurement guidance in FAS 157. Nonbankss should consider these clarifications when measuring fair value for FR Y-7N reporting purposes.

On April 9, 2009, the FASB issued FASB Staff Position No. FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly*

Decreased and Identifying Transactions That Are Not Orderly (FSP FAS 157-4). This FSP provides additional guidance on determining fair value in accordance with FAS 157 when the volume and level of activity have significantly decreased when compared with normal market activity for an asset or liability (or similar assets or liabilities). According to FSP FAS 157-4, a significant decrease in the volume and level of activity for the asset or liability is an indication that transactions or quoted prices may not be determinative of fair value because in such market conditions there may be increased instances of transactions that are not orderly. In those circumstances, further analysis of transactions or quoted prices is needed, and a significant adjustment to the transactions or quoted prices may be necessary to estimate fair value in accordance with Statement 157.

FSP FAS 157-4 is effective for interim and annual reporting periods ending after June 15, 2009, and shall be applied prospectively. Early adoption of this FSP is permitted for periods ending after March 15, 2009, provided FSP FAS 115-2, *Recognition and Presentation of Other-Than-Temporary Impairments*, which is discussed in an earlier section of these Supplemental Instructions, and, if applicable, FSP FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments*, are adopted at the same time. Nonbanks are expected to adopt FSP FAS 157-4 for FR Y-7N reporting purposes in accordance with the FSP's effective date.

Subscription Service

We offer a subscription service which enables you to receive recent news and updates on our reporting forms and instructions and upcoming Bank events. You can sign up for this service at the following website:
http://service.govdelivery.com/service/subscribe.html?code=USFRBNEWYORK_8

Electronic Submission Option

Electronic submission of the FR Y-7N report is available to all U.S. nonbank subsidiaries. We encourage you to take advantage of this method of reporting submission. Vendors have developed a software package that provides the means to submit the FR Y-7N electronically. Submitting reports electronically using the software package provides the following benefits:

- A timely and efficient alternative to sending the report forms by mail; and
- A printed report is generated that can serve as your institution's permanent record of the report.

For information on filing the FR Y-7N report electronically, please contact Christina Dennis at (212) 720-8240.

Website

Copies of the FR Y-7N reporting forms and instructions are also available on the Federal Reserve Board's web site at *www.federalreserve.gov* under "Reporting Forms."

An original and one copy of the completed FR Y-7N report must be received by the Federal Reserve Bank of New York on June 1, 2010. Any FR Y-7N report received after 5:00 p.m. on June 1, 2010 will be considered late unless postmarked by May 29, 2010 or sent by overnight service by May 31, 2010. Completed reports should be submitted to:

Federal Reserve Bank of New York
Statistics Function
33 Liberty Street, 4th Floor
New York, New York 10045

We continue to monitor the accuracy of the periodic regulatory reports submitted for the March 31, 2010 report date. The staff of this Reserve Bank will monitor whether banking organizations are meeting their basic reporting requirements through the use of "validity edits." The edits for the FR Y-7N report are included in the instructions.

Questions regarding the FR Y-7N should be directed to Christina Dennis, Reports Analyst in the Regulatory Reports Division at (212) 720-8240 or Henry Castillo, Team Leader of that Division at (212) 720-1318.

Sincerely,

Signed by Patricia Selvaggi

Patricia Selvaggi
Statistics Officer
Statistics Function

Enclosures:

Attachment
Revisions to the FR Y-7N for March 31, 2010

Instructions

1. The general instructions and line item instructions were revised to clarify the reporting of negative amounts when negative entries are allowed.

2. Schedule IS, "Noninterest expense pertaining to related organizations" (item 7.b) was revised to indicate that negative amounts reported for this item should not be reported as net credit balances in "Noninterest income from related organizations" (item 5.b).

3. Schedule BS, "Unused commitments on securities underwriting" (item 20) and "Unused commitments on loans and all other unused commitments" (item 21) were revised to clarify the reporting of unused commitments.