

new york state society of

NYSSCPA

certified public accountants

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February 3, 2005

Director, TA&I—FSP
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

Letter of Comment No: 15
File Reference: FSP46RB

By email: director@fasb.org

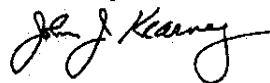
Re: Proposed FSP FIN 46(R) - b

To Whom It May Concern:

The New York State Society of Certified Public Accountants, the oldest state accounting association, represents approximately 30,000 CPAs that will implement the provisions proposed in the captioned FASB staff position. NYSSCPA thanks FASB for the opportunity to comment on its exposure draft.

The NYSSCPA Financial Accounting Standards Committee deliberated the proposed staff position and prepared the attached comments. If you would like additional discussion with the committee, please contact Robert A. Dyson, chair of the Financial Accounting Standards Committee, at (212) 372-1320, or Robert Colson, NYSSCPA staff, at (212) 719-8350.

Sincerely,



John J. Kearney
President

Attachment

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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON PROPOSED FASB STAFF POSITION FIN 46 (R) - b

February 3, 2005

Principal Drafter

Robert A. Dyson

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NYSSCPA Staff

Robert H. Colson

**THE NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS
FINANCIAL ACCOUNTING STANDARDS COMMITTEE
RESPONSE TO PROPOSED FASB STAFF POSITION
FIN 46(R) – b**

February 3, 2005

The Committee applauds the Financial Accounting Standards Board staff's effort to clarify a common transaction, particularly among small businesses. Very often, operating businesses lease land, buildings, and improvements used in their operations from a separate entity owned by either their owners or by one or more principal shareholders. Tax, estate, and legal liability issues often motivate the owners or shareholders to enter into these transactions. Because these transactions are so common, the Committee recommends that the Board issue clear guidance to avoid diversity in practice or inadvertent departure from the standard.

The Board should explain further the principles underlying the proposed FASB Staff Position. Specifically, the Board should provide a concise definition of the term "implicit variable interest." The determination of an implicit variable interest, as described in footnote 3, is based on whether, in substance, the reporting entity *will* absorb the variability of a VIE. Such a determination is actually based on the entity's best guess of future events, which is subject to change. This description implies that an implicit variable interest exists when it is **probable** (as opposed to the more definite **will**) that the reporting entity will absorb the variability of a VIE. The issue then becomes whether the term "probable" should be defined in accordance with SFAS 5, *Accounting for Contingencies*, or the less restrictive application in paragraph 9 of FIN 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*. A clearer definition of implicit variable interest would assist preparers and auditors in applying this guidance in circumstances similar to, but not exactly the same as, the example provided by the proposed FSP.

For example, business owners or principal shareholders often create a separate real estate entity to own property that the reporting operating business shares with unrelated parties. Sometimes the operating entity occupies half or less than half of the total floor space. The operating business and other tenants, through their rent payments, provide the funds for the real estate entity to pay for the mortgage, real estate taxes, and other expenses. If the real estate entity cannot find other tenants, or if these tenants do not pay their rent, the operating business often provides funds in the form of additional rents, loans, or capital contributions to permit the real estate entity to meet its expenses, even in the absence of a written guarantee, in order to avoid foreclosure by the lender of its principal place of business and possible disruption of its operations. This arrangement might be an implicit variable interest requiring consolidation. On the other hand, the reporting entity's performance under this arrangement is contingent upon events that may never occur and whose probability of occurrence could change significantly from year to year. The FSP would provide clearer guidance if revised to define "implicit variable

interest” and provide an additional example illustrating this principle when an entity occupies half or less than half of the property.