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**File Reference No. 3459**

Dear Ms. Bielstein:

Credit Suisse Group ("CSG") appreciates the opportunity to comment on the Financial Accounting Standards Board's ("FASB" or "Board") proposed FASB Staff Position (FSP) No. SOP 78-9-a, "Interaction of AICPA Statement of Position 78-9, *Accounting for Investments in Real Estate Ventures*, and EITF's Issue No. 04-5, "Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights" (collectively referred to herein as the Proposal). We are responding to the proposed guidance both as a preparer of U.S. GAAP financial statements and as an asset manager, managing over \$26 billion of assets in private equity funds.

We agree with the Board's objective to improve consistency in the consolidation model for all entities regardless of the legal form of the entity. Furthermore, we agree that an analysis of kick-out rights and substantive participating rights is appropriate in determining whether a party should consolidate another entity. We generally agree with the conclusions contained in the Proposal as they relate to the level required for kick-out rights to be considered substantive and, therefore, relevant to a limited partnership consolidation analysis. However, we have concerns with the conclusions in the Proposal as they relate to substantive participating rights and whether the model set forth in EITF 96-16 is always relevant to limited partnerships. Prior to final issuance of this guidance, we recommend that the FASB staff conduct further research and analysis to ensure the guidance is appropriate for the unique operating structures to which the guidance relates. Specifically, we believe that limited partnerships are often established among members with common interests to conduct a finite set of specialized activities, which makes the substantive participating rights analysis more difficult than it is in the instance of a corporation. Additionally, we believe that the Examples should be reviewed to assess whether the circumstances described are relevant for limited partnerships as they appear to be largely based on a model developed primarily for entities with a corporate ownership structure that focuses on voting equity interests.

Accordingly, we believe the Board should issue the guidance on kick-out rights that is currently contained in the Proposal (with certain modifications as discussed in the Appendix to this letter), clarifying that such kick-out rights are important rights for purposes of SOP 78-9. In addition, we suggest the FASB staff further study the issue of what constitutes a substantive participating right for a limited partnership consolidation analysis and issue a proposal to comprehensively address substantive participating rights for all entities to ensure there is consistency between SOP 78-9 and EITF 96-16. We believe this approach would result in an immediate enhancement to financial reporting and would allow the Board to more fully realize its objective of developing a consistent and relevant standard for application by all entities.

If the Board decides to move forward with the Proposal, we have made certain specific recommendations that the Board may want to consider in order to clarify the guidance. Such specific recommendations are included in the Appendix to this letter.

If you have any questions or would like any additional information on the comments we have provided, please do not hesitate to contact either Eric Schuppenhauer in New York on 1-212-538-2898 or Todd Runyan in Zurich on +41-1-334-8063.

Sincerely,

Rudolf A. Bless  
Managing Director, Chief Accounting Officer

Anthony Hallett  
Vice President, Accounting Policy Group

**Appendix****Scope of Guidance**

***Sole General Partner (paragraph 3).*** We understand that this guidance only relates to an analysis by a sole general partner in a limited partnership. We observe that the scope of SOP 78-9 is not limited to a sole general partner and suggest that this guidance also not be limited.

**Kick-Out Rights**

***Voting Threshold for Kick-Out Rights (paragraph 6(a)).*** In the Proposal, paragraph 6(a) states: “The kick-out rights can be exercised by a vote of no more than a simple majority of the voting interests held by parties other than the sole general partner or by a vote of a single limited partner and its related parties.”

It is unclear why the notion of “no more than” a simple majority is required and suggest deleting “no more than” to make the wording directly parallel to the wording contained in paragraph B20(a) of FIN46R. In addition, we would ask that the Task Force clarify, perhaps by way of example, the guidance that refers to “a vote of a single limited partner and its related parties,” as we are uncertain how to apply this requirement in practice.

**Substantive Participating Rights**

***Likelihood of Certain Events Occurring Requiring Limited Partner Voting (paragraphs 12 and 19(e)).*** Paragraphs 12 and 19(e) both describe situations in which the limited partners rights would not be considered participating because of the likelihood of certain events occurring (or not occurring). While we agree that consideration should be given to whether such rights would ever be relevant to a consolidation analysis, we believe the Proposal articulates two different thresholds for the same concept --- paragraph 12 sets the threshold at *reasonably possible* and paragraph 19(e) sets the threshold at *more than remote*. As highlighted by the SEC staff when it developed its off-balance sheet rules<sup>1</sup>, more than remote and reasonably possible are not equal thresholds. We suggest that the Task Force select a consistent means of articulating the threshold for purposes of this analysis. We observe that EITF Issue 96-16 set the threshold at *more than remote*, which we believe is the appropriate threshold for purposes of this analysis.

***Consideration of Rights in the Aggregate (paragraph 18).*** Paragraph 18 states, in part, that “...the rights noted above are participating rights because, *in the aggregate*, the

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<sup>1</sup> See SEC Release No. 33-8182, *Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations*, January 28, 2003. See [www.sec.gov/rules/final/33-8182.htm](http://www.sec.gov/rules/final/33-8182.htm).

rights allow the limited partners to effectively participate in the decisions that occur as part of the ordinary course of business...” We are uncertain how to apply this guidance in practice. For instance, should a single right be presumed to be insufficient to give the limited partners substantive participating ability and, therefore, overcome the presumption of control by a general partner? If this is the Task Force’s intention with respect to paragraph 18, we do not agree with the presumption that has been set. We believe there can be circumstances where a single right can be sufficiently significant to give the limited partners substantive participating ability. We recommend that the Task Force modify the guidance to emphasize that a review of facts and circumstances is instrumental in determining whether the limited partners have substantive participating ability and to further clarify that such substantive participating ability may be inherent in a single right held by the limited partners or through a combination of rights.

***Use of the Phrase “Effectively Participate”(paragraphs 10, 11, and 18).*** We believe the Task Force should clarify the meaning of to *effectively participate* in significant decisions, as described in several areas including paragraphs 10, 11 and 18. For example, in paragraph 10, substantive participating rights are described as those that overcome the presumption of control by the sole general partner. It then goes on to describe substantive participating rights as providing the limited partners with the ability to *effectively participate* in significant decisions in the ordinary course of business. Does the Task Force intend for *effectively participate* to mean something different than the notion of *participate*? If so, we believe that the Task Force should clarify the concept. If not, we believe the Task Force should delete the word *effectively* in each instance that it appears in the Proposal.