Letter of Comment No: 10
File Reference: 1082-300
Date Received: 11/10/03

Stacey Sutay

Subject: FW: FIN 46 File Reference NO. 1082-300

-----Original Message-----
From: Director - FASB
Sent: Tuesday, November 11, 2003 7:56 AM
To: Stacey Sutay
Subject: FW: FIN 46 File Reference NO. 1082-300

-----Original Message-----
From: Fontanella, John [mailto:jfontanella@tmdtech.com]
Sent: Monday, November 10, 2003 9:30 AM
To: Director - FASB
Subject: FIN 46 File Reference NO. 1082-300

I would appreciate some clarification as to how paragraphs 5(a), 9, 9(c),and 9A work together.

Let's assume that a single member LLC has been formed to acquire real estate to be leased to an operating company. The operating company is owned 100% by the single member of the LLC. The equity invested in the lessor will be 9% of the LLC's total assets. The bank requires a guarantee of the related mortgage from both the equity investor and the operating company in order to provide the funding.

I would say, based on paragraph 5(a), that the lessor is subject to consolidation because "The total equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support provided by any parties, including equity holders".

Now, paragraph 9. would agree based on the 10% rule, but if the lessor can demonstrate, in accordance with paragraph 9(c), that "The amount of equity invested in the entity exceeds the estimate of the entity's expected losses based on reasonable quantitative evidence", then the lessor would not be subject to consolidation. Paragraph 9A discusses that "Qualitative assessments shall be carefully considered before attempting to estimate an entity's expected losses and equity investment at risk in paragraph 9(c)". Let's assume that qualitative assessments were made and the lessor's expected losses are determined to be less than the equity investment at risk.

Combining the guidance found in paragraphs 5(a), 9, 9(c), and 9A, it would seem that in this case before us, because qualitative assessments of the sufficiency of equity revealed that the equity invested exceeds the estimate of the expected losses, the lessor is not subject to consolidation, even though the bank required guarantees of the debt from the equity investor and the lessee.

If the preceding paragraph is correct, I would suggest some clarification be provided, because there are many who believe that the analysis of whether or not the lessor is subject to consolidation, begins and ends with the bank's requirement of the guarantee of the debt.

Thank you.

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