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VIA E-MAIL: director@fasb.org

Signed copy by Federal Express

Members of the Board
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116
c/o: Ms. Suzanne Bielstein
Director of Major Projects and Technical Activities
File Reference No. 1082-200

Re: More on Not-For-Profit Entities
Board Discussion on November 6, 2002
Consolidation of Certain Special-Purpose Entities

Dear Members of the Board:

I was grateful for the opportunity to dial into the portion of the meeting of the Board held yesterday which addressed issues arising under the Exposure Draft Interpretation on "Consolidation of Certain Special-Purpose Entities." Given the time differences, that represented a very early start to my day so it is possible that I followed the outcome less effectively than would be ideal. As I understand, the Board took the following decisions with respect to the applicability of the proposed Interpretation to not-for-profit organizations, aspects of which were addressed in my letters dated August 30, 2002, and October 9, 2002:

- a. Nonprofit organizations will be scoped out of the Interpretation both as a consolidating party and as a consolidated party.
- b. Any "variable interest" held by such nonprofit organization which is a "related party" of a for-profit entity by virtue of having received such variable interest as a contribution from that for-profit entity (as described in Paragraph 15.d. of the Exposure Draft) would, however, be treated as being held by such for-profit entity and its "related party group" in measuring the magnitude of its "variable interest" to determine whether that for-profit entity/group is the "primary beneficiary."
- c. The Board reserved determination as to how "nonprofit organization" would be defined, specifically including the question of whether it would extend to other entities formed and held by such organization.

In that context, I submit the following for consideration by the Board:

1. Defining the Scoped-out Class of Entities

At various points in the discussion on this topic, references were made to "nonprofit corporations." As a practical matter, the organic structure of "nonprofit entities" is governed by state law. Unfortunately, those laws are not uniform from state-to-state and the limitations on activities of them are also not uniformly enforced. Focusing solely on structure in this context is likely to lead not to uniformity but to erratic implementation.

As best I could tell, the key reason for having this scope exception is that "typical" nonprofit entities are barred from permitting any private party to benefit from the assets and/or operations thereof -- including benefits which would otherwise be in the nature of a "variable interest." To the extent there is any uniformity on that, it is uniquely a function of application of the provisions of Section 501 of the Internal Revenue Code (the "Code"), and rules/rulings under it. My suggestion, therefore, would be that the definition of the "nonprofit organizations" class of parties to be scoped out of the interpretation of ARB 51 would productively be made with reference to exemption from federal taxation as provided in Section 501(a) of the Code.

2. Disregarded Entities

Although couched in terms of "nonprofit corporation" during the discussion of the Board, the question also came up as to whether an SPE owned by a nonprofit entity should be included in the scoped-out class even if such entity did not itself directly hold a determination of tax-exempt status.

I resubmit for consideration of the Board the presentation made on that point in my Letter of Comment dated August 30, 2002, regarding "Disregarded Entities". As noted in that letter, entities which fall into that category do so because they are deemed by the Internal Revenue Service not to be separate entities at all but instead are deemed to be a part of the tax-exempt entity (almost as if a branch, division, department, or the like, of it) and therefore have the tax status of it. Under that analysis, the activities of a Disregarded Entity are deemed to be the activities of the tax-exempt entity. Any grant by the Disregarded Entity of a private benefit would have the same effect as if it had been granted by the tax-exempt entity and the tax-exempt status of the latter thus lost. In that event, neither entity would then fall within the scope exception of the Interpretation.

3. Proposed Definition(s)

One approach to implementing the decision taken by the Board today on this topic would be for the final Interpretation to include a provision such as the following:

"Nonprofit Organizations (as hereinafter defined) are not within the scope of this Interpretation, either as entities which would otherwise be consolidated under this Interpretation or as parties required under this Interpretation to consolidate any other entity. A "Nonprofit Organization" is defined to mean (a) a "Not-For-Profit Entity" and (b) any "Disregarded Entity" with respect to it. A "Not-For-Profit Entity" is defined to mean a legally formed and recognized entity organized under state or federal law for public, charitable, educational, or religious purposes and prohibited from distributing profits to individuals or other parties which are not themselves so organized or otherwise

exempt from federal income taxation, and which has received a determination from the Internal Revenue Service that it is exempt from federal income taxation pursuant to Section 501(a) of the Internal Revenue Code of 1986, or the corresponding section of any future federal code, which determination is (and remains) in effect and valid. A "Disregarded Entity" is defined to mean a legally formed and recognized entity organized under state or federal law and which is disregarded as an entity separate from its Not-For-Profit Entity owner for federal income tax purposes. Notwithstanding the foregoing, a Nonprofit Organization may be considered a "related party" for purposes of determining under [paragraph 15] whether an other entity to which it is thus related is a primary beneficiary of an SPE under this Interpretation. Nothing contained in this [paragraph __] shall be deemed to constitute a modification of the scope or provisions of Statement of Position 94-3, "Reporting of Related Entities by Not-for-Profit Organizations" (September 2, 1994).

I hope that the foregoing follow-up is useful in addressing the issues raised during the portion of the meeting of the Board on this topic. Please do not hesitate to contact me if there should be any questions with respect to this issue generally or the proposal contained herein.

Very truly yours,

/s/

Steven K. Hazen