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November 12, 2002

Mr. Robert Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Proposed Interpretation, *Consolidation of Certain Special-Purpose Entities*

Dear Chairman Herz:

The Bond Market Association has been following the Board's recent deliberations and tentative decisions reached to date on the proposed Interpretation on Consolidation of Certain Special-Purpose Entities (the ED). We commend the Board for addressing in a comprehensive manner many of the important concerns that constituents have raised regarding the ED, both in their comment letters and in the Roundtable discussion sponsored by the Board.

However, we are writing at this time to express our members' concerns that a number of the tentative decisions reached during the redeliberation process will result in (1) for many constituents, an opposite consolidation conclusion than would have been reached based on the provisions of the ED that was distributed for comments and (2) for other constituents, a different consolidation analysis whose outcomes have not yet been evaluated. For these reasons, we urge the Board to consider re-exposing the proposal. Below we highlight some of the significant changes that the Board has either tentatively agreed to or is currently evaluating:

- The Board is in the process of making significant changes to clarify the scope for which consolidation will be based on voting interests (described in paragraph 9 of the ED). The interpretation now appears to apply to substantive operating companies (which were not considered special-purpose entities under the ED) in which voting rights are not substantive. It has been very difficult for constituents to understand the final outcome of the Board discussions on this modified language. As such, we are concerned that the changes to paragraph 9 may have unexpected and unintended results for many reporting entities.

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- The ED originally proposed a separate consolidation model for SPEs that hold only certain financial assets (commonly referred to as the FSPE model). Although our members suggested a number of changes regarding the criteria required to qualify for this model, we supported the conceptual basis behind this model as it acknowledged that certain qualifying risk dispersing vehicles have no primary beneficiary. The elimination of this approach will substantially change the analysis for many investors in SPEs, including 1) parties who hold 50% or a near majority of the variable interests in an SPE and 2) investors who hold senior or subordinated or residual interests issued by qualifying SPEs.
- The ED originally set forth an approach where consolidation would be assessed by comparing the expected future losses from the variable interests held by each of the parties to the SPE. The Board is now considering adopting an approach whereby parties to an SPE would have to consider not only the downside risk of a variable interest, but would have to consider the potential upside as well. We believe this constitutes a major change in approach that could lead to a significantly different conclusion regarding consolidation for many entities that enter into transactions with SPEs, including, for example, asset managers who receive performance-based fees for managing the assets of an SPE.
- The ED originally provided that if contractual or legal provisions or agreements substantially restrict an enterprise's rights and obligations to specifically identified assets of an SPE and the interests of the creditors of the SPE apply equally to all of the SPE's assets, that enterprise shall treat those assets and the portions of the SPE's liabilities attributable to those assets as a separate SPE. We understand that the Board has tentatively decided to change the application of this provision such that it would apply only where an enterprise's rights and obligations are restricted to specifically identified assets *and liabilities* of an SPE. The introduction of this revision significantly changes the analysis for CP conduit structures. In addition, the recent discussions regarding how to analyze retained subordinated interests as they relate to conduit structures will also likely change the consolidation analysis and conclusions for these entities.
- The Board is also moving towards an approach that requires an initial assessment of whether an SPE's operations require significant decision-making. This change will likely significantly change the consolidation analysis and conclusions for many structures including collateralized debt obligation vehicles and CP conduit structures. The Board also appears to have made a subtle, but significant change to the assessment of decision-making authority by now reverting back to the authority to purchase *or* sell assets rather than the authority to purchase *and* sell assets, which was the criterion contained in the ED and that was addressed in our comment letter.

- We also understand that the Board is considering adding disclosure requirements regarding the potential impact of the final interpretation as it applies to existing SPEs where it is reasonably possible that they will be required to be consolidated, as well as those SPEs that are not consolidated but with which an entity has significant involvement; and that these disclosures may be required for the current fiscal year end, including those annual periods ending November 30, 2002. It appears that these new disclosures are fairly extensive in nature and will require a significant amount of additional work and analysis in a compressed time frame. It will be exceedingly difficult for constituents with annual periods ending in either November or December of 2002 to meet these requirements.

Considering the individual and collective impacts of these changes, we believe that many constituents might now reach very different conclusions regarding the impact of the interpretation as compared with the ED. As a result, the Board would have received additional comments or different comments than the ones on which they based their redeliberations. Because this project will affect the accounting for a wide variety of transactions, we believe it is critical that its application be fully understood by the constituents who will be affected.

Accordingly, we respectfully request that the Board re-expose the interpretation for public comment. We are aware the Board is intent on resolving the issues surrounding the consolidation of SPEs quickly in light of the heightened scrutiny of off-balance sheet financing. It is not our intent to suggest a step that would unduly or unnecessarily delay the issuance of this important interpretation. However, we believe that the changes currently being deliberated by the Board are of such significance that a re-exposure of the revised ED is warranted. Given the Board's concern over the need to resolve the issues regarding consolidation of SPEs on a timely basis, perhaps a short (30-day) re-exposure period would balance the request for full due process with the need for timely issuance of a final interpretation. If no revised interpretation is circulated for public review and comment, we ask that the Board consider making a draft available to interested parties that have been actively following this project for review for "fatal flaws".

If the Board declines to re-expose the interpretation, however, we would request that at a minimum the Board reconsider the extensive additional disclosure requirements it is currently contemplating for this year-end. We believe that the many changes that are being considered to the ED, combined with the expected issuance of the final interpretation so close to year-end (which for many of our members is November 30, 2002) and the difficult judgments and analysis required by the disclosure, will pose quite a substantial challenge to preparers to accurately and fully comply by the time their financial statements are prepared in final form.

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If you have any questions regarding this letter, please do not hesitate to contact either of us.

Sincerely,



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