



September 27, 2002

BY EMAIL director@fasb.org

MP&T Director -- File Reference 1082-200
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Re: Exposure Draft
Proposed Interpretation
Consolidation of Certain Special-Purpose Entities
An Interpretation of ARB No. 51
Your File Reference 1082-200

Letter of Comment No: **134A**
File Reference: **1082-200**
Date Received: **10-01-02**

Ladies and Gentlemen:

On behalf of the lease finance practice at Mayer, Brown, Rowe & Maw, I am submitting comments to the above-referenced exposure draft. We are submitting this comment letter to address the issue regarding the modification of the scope exception as discussed by FASB on September 11, 2002, which has raised the possibility of significant changes from the Exposure Draft as issued.

Leasing transactions often use SPEs for many legal and structural reasons unrelated to accounting treatment. For example, the use of a trust in a leasing transaction permit simple transfer of the equity investor's interest without requiring significant amendments to operative documentation and reissuance of debt, as well as avoiding additional registration and security filing fees, which may be quite significant. We strongly believe that the vast majority of leasing transactions (including leveraged and single investor leases) were not the subject of the accounting abuses which have unfortunately occurred. Throughout the discussions earlier this year which resulted in the issuance of the Exposure Draft, it had been our understanding that FASB agreed with that assessment and would propose an exposure draft which confirmed that it was not applicable to customary lease financings which use SPEs.

We understood that the scope exception was intended to address this point. We are quite concerned that the deletion of the scope exception of paragraph 8(c) of the Exposure Draft or the absorption of the scope exception into the voting interests test of paragraph 9 of the Exposure Draft would eliminate any exception for customary lease financings, with the result that lease financings which use SPEs would be subject to the Interpretation. That result would significantly

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affect the ability to consummate many lease financings which have heretofore not raised concerns related to accounting abuses.

Further, we had understood that FASB, in the current consolidation project, expressly did not intend to address changes to the lease accounting principles (*i.e.*, SFAS 13 and SFAS 98), nor derecognition issues.

Thus, the leasing community has not had the opportunity to review with FASB and its staff the nature of the many types of simple and complex lease transactions to ensure that the Interpretation would not alter the expectations of the parties to existing and future leasing transactions in an inappropriate manner.

Without the scope exception, there is a great risk that the SOE (through analysis by its accountants) will consolidate the SPE but that the lessee (through analysis by its accountants) will likewise be required to consolidate the SPE. As the scope of the current FASB project does not involve the derecognition issues, we believe that an Interpretation which presents this dual recognition issue will create more confusion than clarification in financial statements.

It is our belief that a lease financing which is properly structured to satisfy the current applicable accounting rules, including SFAS 13 and SFAS 98, should be recognized accordingly, and does not require review under the Interpretation merely because that transaction, for other legitimate reasons, has used an entity which the Interpretation may determine is an SPE.

We understand that a principle goal of this FASB project has been to address the creation and use of SPEs which hold assets and incur liabilities which are not included on the balance sheet of any party to the applicable transactions. We note that the Exposure Draft, including the scope exceptions of paragraph 8, addresses that concern.

On a related point, we understand that as a general matter, through this process, FASB has determined that the prior minimum equity requirement of 3% may be insufficient and has proposed a presumption that 10% minimum equity would be required. We understand FASB's desire to clarify this issue. We wonder whether FASB has considered whether applying the requirements of paragraph 9(b) of the Exposure Draft (as explicated in paragraph 12) to the scope exception in paragraph 8(c) would address the concerns regarding that scope exception.

We appreciate the opportunity to address this scope exception issue which has recently been raised.

I and others in the lease finance practice at Mayer, Brown, Rowe and Maw are prepared to discuss these matters further if that would be useful.

Very truly yours,


Robert F. Gordon