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August 30, 2002

MP&T Director -- File Reference 1082-200  
Financial Accounting Standards Board  
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P.O. Box 5116  
Norwalk, Connecticut 06856-5116

Letter of Comment No: 120  
File Reference: 1082-200  
Date Received: 08/30/02

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

Dear Sirs:

Please take into consideration my brief thoughts on this Exposure Draft.

General-1

I agree with the conclusion that controlling financial interest can be established by means of other than majority voting interest. For instance, ARB-51.1 states in part:

There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one of the companies in the group directly or indirectly has a controlling financial interest in the other companies.

This says to me that the ARB believed that the key issue is "controlling financial interest," not how it was obtained.

Paragraph 2 of ARB-51 goes on:

The usual condition for a controlling financial interest is ownership of a majority voting interest ....  
[Emphasis Added]

The Board's wording, without doubt, leaves open the possibility that there may be other conditions that create a controlling interest and also cases where a majority voting interest would not create a controlling financial interest. Even the cases they provide in that paragraph for non-consolidation are, "For example ...."

AIN-APB18#2 also seems to shed some light; it states in part, "Many of the provisions of the Opinion would be appropriate in accounting for investments in these unincorporated entities [i.e., partnerships and unincorporated joint ventures] ...." This AIN would suggest that APB-18's "20% or more of the voting stock" provision would therefore have to be applied even though there likely would not be "voting stock" in a partnership or unincorporated joint venture. Therefore, if the "the ability to exercise significant

influence" can be established without voting stock, it is fair to presume that "controlling financial interest" can also be established without voting stock.

It is also important to recall that FAS-68.2 faced the non-equity interest issue:

The legal structure of a research and development arrangement may take a variety of forms .... An enterprise might have an equity interest in the arrangement, or its legal involvement might be only contractual (for example, a contract to provide services and an option to acquire the results of the research and development). [Emphasis Added]

In the end, FAS-68 concluded that the "form" was not a relevant factor. I believe the Board has made the same proper decision in this Exposure Draft.

## General-2

I urge the Board to vote against adoption of this Exposure Draft because of its high degree of complexity, length, and abstractness. It looks like an attorney wrote it (and that is not good).

Interpretations are intended to simplify and clarify. This Exposure Draft does just the opposite.

Most Interpretations to date are two or three pages. Look at this Exposure Draft, even before needed practical examples.

I saw, Appendix A, Examples," and thought, "great, this will help." What I found certainly didn't help. I suggest that you look at the helpful Examples in FIN-18 and FIN-28, and the helpful Examples in EITF 96-20 and include examples of that nature in this Interpretation.

A flowchart and glossary would also help.

Finally, this Exposure Draft is so prescriptive that the day it is passed the "bad guys" will be writing arrangements that will by-pass its requirements. In addition, such language will not let the document grow with time. Look at ARB-51 with its, "The usual condition," For example, "This includes," "It ordinarily," and so on, that has made the document flexible enough that it is still in use 43-years after it was written. Your new pronouncement should follow that wisdom.

## Paragraph 7a

You state, "... and has sufficient equity to finance its operations without support from any other enterprise or entity except its owners." I would suggest that many a *substantive operating enterprise* could not exist without significant bank financing. I am sorry I cannot suggest better wording, but what you have needs, I believe, some reworking.

#### Paragraph 8a

You state here and elsewhere that FAS-140 SPEs are not subject to consolidation. Even after quickly reading B21-B23, I cannot see the justification for automatic non-consolidation. From a substance-over-form concept standpoint, I just cannot see that these SPEs are anymore than a version of a finance subsidiary. They are not, in general, independent third companies.

#### Paragraph 9

Consolidation based on voting interest under ARB-51 seems to be fairly clear already, so the purpose of paragraph 9 is not readily apparent. Are you saying that, for instance, a 55% voting interest must also have all these conditions in order to require consolidation? Or are saying that, for instance, a 45% direct voting interest plus all these indirect conditions will be the equivalent of more than 50% interest?

#### Paragraph 9b, Footnote 3

Given the nature of available financial instruments plus the presence of guarantees, etc., isn't it possible to have losses greater than your present total assets?

#### Paragraph 14

Are you setting the stage for a situation where an SPE's classification could change back and forth, for example, included 19x1, excluded 19x2, included 19x3? I would suggest that you use the same logic the FASB used with including and excluding "segments."

#### Paragraph B10

You state here and elsewhere, "... or a significant portion of the variable interests that is *significantly more* than any other enterprise's variable interest." I apologize, but I have been unable to find where "significantly more," is defined or discussed.

#### Paragraph B12

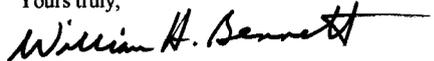
You use the phrases here and elsewhere, "an SPE covered by this Interpretation," and "an SPE subject to this Interpretation." Is it not possible to argue that all SPEs are to be evaluated under this Interpretation, and some will meet its conditions and others will not? The use of "qualified," etc. would be helpful.

Possible Understatements

Do you need to mention cases where there is board membership without equity investment and cases where there is super-voting equity (e.g., 5 votes a share for some classes of equity)?

I hope my brief comments are helpful to you.

Yours truly,

A handwritten signature in black ink that reads "William H. Bennett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

William H. Bennett