## **Stacey Sutay**

From: Len Tatore

Sent: Tuesday, September 03, 2002 10:18 AM

To: Stacey Sutay

Subject: FW: Response to FASB Exposure Draft, Consolidation of Certain Special-Purpose Entities.

----Original Message-----

From: John.McEnerney@banking.state.ny.us [mailto:John.McEnerney@banking.state.ny.us] Sent: Friday, August 30, 2002 9:59 AM

To: director@fasb.org

Subject: Response to FASB Exposure Draft, Consolidation of Certain

Special-Purpose Entities,

## Dear Ms. Bielstein:

The New York State Banking Department (the Department) appreciates the opportunity to respond to the Financial Accounting Standards Board's (the Board's) exposure draft, Consolidation of Certain Special-Purpose Entities. The Department appreciates the urgent nature of this issue and agrees with the Board's efforts to consolidate more special-purpose entities (SPEs). To fully restore investors' confidence in the financial markets, accounting must reflect economic realities and disclosures must be complete and accurate

In the Department's opinion, the Board should issue a new statement to require that an institution which controls an SPE must include the SPE in the institution's consolidated financial statements. Consolidation should be required by those in ultimate control. This necessitates looking through entities such as "orphaned" SPEs to determine who, if anyone, actually has control.

To make this approach operational, the Department suggests that the new statement include a list of presumptions that should trigger the consolidation of SPEs. These presumptions can largely be taken from the current exposure draft. The Board should state that consolidation may be required even when none of the presumptions are met.

The Department acknowledges that using the basic concept of control will require extensive judgment by financial statement preparers, auditors, and regulators, but it prefers such judgment over detailed rules that may allow substance to be hidden. The Department believes control can often be determined by analyzing how an SPE was established. This analysis should include the perspectives of the sponsor, the transferor, and the beneficiaries.

The Department applauds the Board's explicit inclusion of related parties. Transparency would be enhanced further by requiring disclosures of the amounts of all assets and liabilities that each institution has in unconsolidated and off-balance-sheet SPEs.

Following are additional specific comments on the existing exposure draft which should be useful if the Board continues to pursue a more detailed approach.

Along with other key terms, SPEs should be defined.

Letter of Comment No: 99 File Reference: 1082-200 Date Received: 08/30/02

- Flow charts or diagrams should accompany accounting standards that require various determinations.
- Delete the last sentence in paragraph 7a. The issuance of financial statements could become an easily-applied loophole.
- Make explicit that paragraph 8a applies only when the transfer meets the conditions for a sale.
- The ten percent benchmark explained in paragraph 12 is not a significant improvement over the three percent threshold established by the Emerging Issues Task Force. In practice any such benchmark will likely become a key factor on which consolidation is determined, and the terms of transactions will be adjusted to accomplish consolidation or unconsolidation as management desires. If a number is needed, the Department suggests a higher threshold such as twenty or twenty-five percent. To avoid a return to an amount below the ten percent suggested, the Department would eliminate the third sentence in paragraph 12, which opens the door to an amount below the benchmark. In the same manner, the Department would revise the second sentence in paragraph B9 to change the phrase "not likely to be sufficient for most SPEs" to "insufficient for SPEs."
- The Board does not address derecognition in this exposure draft. The Department is concerned that financial statement preparers may seek to switch between having an SPE consolidated and having the same SPE unconsolidated to optimize financial results. The Board's proposal could lead to frequent switching between the two forms, and make financial statements more volatile and less comparable. The Department's proposal should effectively eliminate such concerns.

If you have any questions or if you would like to discuss our comments, please call me at (212) 618-6953.

Very truly yours,

John McEnerney
Chief of Regulatory Accounting

cc: R. Herdman, Securities and Exchange Commission