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To: director@fasb.org, File Reference 1082-200
Financial Accounting Standards Board

From: ING Capital Advisors, LLC

Re: Proposed Interpretation – Consolidation Of Special-Purpose Entities

Date: August 19, 2002

The purpose of this memo is to comment on the Exposure Draft relating to the Consolidation of Certain Special-Purpose Entities (“ED”).

OVERVIEW OF CONSOLIDATION OF CERTAIN SPEs

ING Capital Advisors, LLC (“ICA”), a wholly owned subsidiary of the ING Group, is an investment advisor that specializes in the management of non-investment grade leveraged loans. ICA manages these non-investment grade loan portfolios on behalf of institutions and pooled funds. Some of these pooled-funds consist of Collateralized Loan Obligations and other similar products (“CLOs”) that can be defined as Special Purpose Entities (“SPEs”). ICA serves as an asset manager to the portfolio assets (or collateral) held by the CLO. These CLOs are created for alternative investment opportunities for third party investors, as there typically is an arbitrage between the funding costs of a CLO and the yield on the assets of a CLO. CLOs such as these are created only to satisfy investor demand, they would not exist otherwise. CLOs such as these are not used for balance sheet maintenance, hedging, reinsurance or other similar pursuits.

These third party investors purchase the debt instruments and beneficial interests issued by the CLO. The debt instruments issued by the CLOs are rated by nationally recognized rating agencies on a stand-alone basis. These debt instruments have no recourse beyond the assets of the CLO. These debt instruments are typically distributed by unaffiliated dealer(s) for a fee paid by the CLO, although in some cases, the dealer may be affiliated with the asset manager. Generally, third party investors purchase all, or substantially all, of the debt instruments of a CLO. Third-party investors typically purchase a substantial portion, or at least a majority of beneficial interests from the same dealer(s) who distribute the debt instruments. The beneficial interests have rights that allow them, under certain circumstances, to terminate the asset management contract. In addition to distributing debt instruments and beneficial interests, these dealer(s) typically take a leading role in creating and designing the CLO in exchange for a fee.

The proceeds (net of costs paid to the dealers and others) from the issuance of debt instruments and beneficial interests received by the CLO are used to purchase a portfolio of non-investment grade loans and similar other products. Generally, except in a few cases in which the asset manager is affiliated with a large active market participant, almost all of the non-investment-grade loans that comprise the assets of the CLO are purchased from (and in certain case, subsequently sold to) unaffiliated large third-party

commercial banks. The unaffiliated banks generally receive commissions in connection with such transactions. Also, such CLOs generally employ a third party trustee and custodian, who in return for a fee, prepares detailed investor reports which track performance and monitor compliance with investment guidelines and rating agency criteria.

In general, we believe that consolidating a CLO whose primary purpose is to provide investment opportunity to third party investors (and for which the assets manager and its affiliates holds less than 50% of the beneficial interests) on the books of the asset manager is inappropriate. We strongly believe that the risks of the CLO are dispersed among the investors and that no one single party controls a CLO, except to the extent that a party holds a majority of interests. Combining assets purchased from third parties and non-recourse liabilities of a CLO on the books of an asset manager does not appear to be particularly informative. We cannot see how such consolidation accounting can add any meaningful disclosure with regard to rights and future obligations of an asset manager. If such a pronouncement becomes effective, then (as various investors have pointed out) it will be necessary to train analysts to “deconsolidate” financial statements that are distorted through such consolidation.

SPECIFIC COMMENTS ON THE ED, PARAGRAPHS 22 AND 23

We believe that the Financial Accounting Standards Board (“the Board”) share some of the same concerns indicated above under “Overview of Consolidation of Certain SPEs”. We believe that is the reason that there is an exemption provided for SPEs That Hold Certain Financial Assets (“FSPEs”).

We believe that under 22b, most CLOs would meet that definition with the following exception. Almost all CLOs can hold, to a limited extent, tightly defined synthetic securities and other derivative instruments that may not be permitted under paragraph 35 of Statement 140. A typical synthetic type security which can be held by a CLO would consist of a security that has the same default probability as the underlying loan but that the maturity date, interest rate or other non-credit characteristics of the loan are changed in order to meet the investment restrictions of the CLO. Such instruments do not increase the level of leverage of a CLO nor does such an instrument support or guarantee the debt instruments issued by the CLO. The counterparty of such derivatives is generally unaffiliated with the asset manager. We propose that the definition of 22b be enlarged in order to encompass investments in such instruments. This is very important, because almost all CLOs currently in the market place have the ability (although some may not utilize it) to make investments in synthetic securities and other similar derivatives. Without such a technical change, we are not sure that many of the CLOs in the market today would qualify as a FSPE under 22b. We believe that the reference by the Board to paragraph 35 of Statement 140 was done as a matter of convenience, however, for this exception to operate in the manner intended (actively managed CDOs), then the definition of the FSPE will have to be broadened a bit.

Under paragraph 23 (b), certain accounting professionals believe that the purchase of a beneficial interest (at whatever amount) constitutes asset support under 23b. It is very common for the asset manager to make some investment in the CLO that it is managing. As with other types of pooled investment funds, asset managers (and even the personnel of asset managers) make investments in the pooled funds they manage because first, they believe in the product and second, they wish to demonstrate that belief to other investors. Typically, this investment is in the beneficial interest of CLO that is subordinate to the rated debt instruments issued by the CLO, but pari-pasu to the interests of other beneficial owners. It is less typical for an asset manager to provide other or more extensive forms of financial support such as guarantees or the like in the types of CLOs we have described in this memo. When describing asset support in paragraph 23 (b), we believe that the Board was describing asset support that calls for future obligations or potential future obligations from the asset manager and not minority investments in the debt instruments or beneficial interests of a CLO. We propose that (b) under paragraph 23, the types of asset support described specifically relate to asset support, guarantees or liquidity arrangements that creates an actual or potential future obligation to the enterprise.

Under paragraph 23 (c), there is a question as to what constitutes a market-based fee under paragraph 19. Different interpretations have surfaced among the accounting professionals we have consulted. Some accounting professionals believe, that under paragraph 19 of the ED, that if the asset manager has an investment at- risk, than the investment advisor's fee is automatically classified as non-market based while other professionals believe that fees are presumed to be non-market based unless the fee can be demonstrated to be comparable to other arm's length transactions regardless of whether the asset manager has an investment at- risk or not. As we have indicated earlier in this memo, the purpose of such CLOs is to provide investment opportunities to third party investors. As a result, we can assure the Board that the asset management fees among such CLOs is very competitive regardless of if the asset manager makes an investment or not. We propose that for purposes of paragraph 23 (c), the determination of whether a fee is market based or not, provided that the asset manager or other service provider does not hold a majority of beneficial interests, should be based upon fees charged or terms undertaken for other similar services provided by that service provider. Although it would be difficult to compare fee structures between SPEs (since they are substantially all private transactions), asset managers and other service providers can compare their fees to other types of clients for which they render similar services. We believe that most CLOs, for which the majority of at risk investments have been distributed to third parties, will demonstrate that the investment advisory fee is "in the market".

SPECIFIC COMMENTS ON THE ED, PARAGRAPHS 13 THROUGH 21

We hope that the Board will make the technical changes to paragraphs 22 and 23 in order to allow CLOs of the kind described above to be classified as SPEs with no primary beneficiary.

However, notwithstanding this point, we would like to raise some issues contained in paragraph 13 through 21 of the ED that specifies a "variable interest" approach for SPEs.

First, as stated in paragraph 13 in the ED, "if the enterprise does not provide significant financial support, it is not the primary beneficiary". There seems to be confusion as to what constitutes "significant financial support" among accounting professionals. Some accounting professionals have interpreted this amount to be as low as 10% to 20%. We do not believe that "financial support" of these low amounts should require a holder to consolidate an SPE. In addition, the ED states "the enterprise is the primary beneficiary if it provides a majority of the financial support or a significant portion of the total financial support that is significantly more than any other party." Once again, we think this type of language is unclear and will result in many different interpretations. In this way similar transactions will be accounted for in very different ways.

In addition, in the case of the types of CLOs we have described above, beneficial interests are held in nominee names (in some cases a single entity may hold an investment under several different nominee names). These beneficial interests are traded. It is not clear that all of the different participants in an SPE will have access to the identities of all of the other parties who provide financial support. Also, under certain circumstances, these beneficial interests or service contracts may become impaired under which it may be interpreted that other party provides significantly more financial support.

As a result of these factors, we want to reinforce what the Board already knows; identification of the Primary Beneficiary (which holds significantly more than other party) is going to be difficult and uncertain. In order to have more uniform accounting, and more certain conclusions, we believe the Board should reconsider and raise the benchmark of consolidation to a majority of variable interests from the current standard contained in the ED.

Second, we want to discuss paragraph 19 in regard to Management Contracts. As we have indicated previously, the CLOs that we have described earlier in this memo exist to meet third party investor appetite for debt instruments and beneficial interests issued by such CLOs. Investors in debt instruments and beneficial interests of CLOs have many CLO investment opportunities from which to choose. They evaluate different CLOs on the merits of the underlying structure, the track record of the manager and the costs and expenses of the service contracts and other fees. Accordingly, we cannot stress enough, that for ourselves and our competitors, we believe that in today's market, asset management fees are market based regardless if the asset manager has an investment at-risk or not.

There appears to be some uncertainty among our accounting professionals regarding the determination of market-based fee with regard to a Management Contract pursuant to the ED. Most of our accounting professionals believe that the ED indicates that if the asset manager has an investment at – risk in the SPE, than, by definition, fees under a Management Contract are not market based and thus constitute a variable interest. As indicated above, we strongly believe that this view does not reflect the general market reality.

Accordingly, we propose that for purposes of paragraph 19 the determination of whether a fee is market based or not, provided that the asset manager or other service provider does not hold a majority of beneficial interests, should be based upon fees charged or terms undertaken for other similar services provided by that service provider. Although it would difficult to compare fee structures between SPEs (since they are substantially all private transactions), asset managers and other service providers can compare their fees to other types of clients for which they render similar services. We believe that most CLOs, for which the majority of at risk investments have been distributed to third parties, will demonstrate that the investment advisory fee is “in the market”.

SPECIFIC COMMENTS ON THE ED, PARAGRAPH 9

We have several comments with regard to paragraph 9 within the ED that describes what is known as “the voting interest model”.

First, there is much uncertainty under 9e. Some accounting professionals would suggest that a fee paid to an asset manager (who also holds a portion of the equity position) is not market based by definition, and therefore could not satisfy 9e. Once again its important to indicate that the determination of whether a fee is market based or not, provided that the asset manager or other service provider does not hold a majority of beneficial interests, should be based upon fees charged or terms undertaken for other similar services provided by that service provider. Although it would difficult to compare fee structures between SPEs (since they are substantially all private transactions), asset managers and other service providers can compare their fees to other types of clients for which they render similar services. In addition, the equity held by this service provider (assuming that the fees are market based) should be included in determining if the amount of equity is sufficient.

Also, the determination the sufficient equity level is unclear. Many CLOs do not need a support level of 10% equity. The underwriters, asset managers and rating agencies do the determination of equity levels, which includes rigorous analysis of future losses among other things, at the inception of the CLO. The same parties monitor these CLOs over the life of the transaction. Accordingly, we think the presumption of 10% equity level and the reference to the equity level of a substantive operating company does not provide meaningful benchmarks.

CONCLUSION

In conclusion we want to reiterate that we believe that the consolidation of the CLOs described in this letter would mislead rather than enhance a financial statement readers understanding of an asset manager. We believe that the posting of non-recourse debt and assets on the financial statement of an asset manager is misleading and we think most financial analysts would agree with this assessment.

We believe that the Board recognizes this and had attempted to create the concept of an FSPE (paragraph 22 and 23) to eliminate such misleading reporting. However, as described above, we believe there needs to be technical changes/clarifications need to be made in order to allow this FSPE concept to be effective.

We also believe that both the voting interests and variable interest methods have some limitations in their practical application. We believe that these practical application problems must be addressed, or comparisons between financial statements will be rendered less meaningful.

Finally, we also want to say that if some modifications are not made in the current ED, not only will financial reporting suffer, but that the implementation of the ED in its present form would restrict the use of SPEs such as CLOs. Large financial institution, facing the consolidation of non-recourse assets and liabilities and the resulting distortions in their capital accounts, would hesitate in providing asset management services to CLOs. Without these market participants, only private asset management companies, which lack the financial wherewithal of large public companies, would manage CLOs. The demand for leverage loans from the CLO market (which accounts for approximately 50% of the purchasers of leveraged loans) would be reduced. Accordingly, credit for non-investment grade companies would probably be reduced, as investors in CLO would turn to other alternatives. It is difficult to assess the impact on the economy, but it certainly would be negative.

Thank you for your time and attention in this matter.