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Letter of Comment No: 89

File Reference: 1082-200 Date Received: 09/03/02

Stacey Sutay

From: Len Tatore

Sent: Tuesday, September 03, 2002 7:46 AM

To: Stacey Sutay

Subject: FW: Comments to FASB on Guarantees

----Original Message----

From: Karen Weller [mailto:kweller@Inrproperty.com]

Sent: Friday, August 30, 2002 7:37 PM To: 'director@fasb.org'

Subject: Comments to FASB on Guarantees

August 30, 2002

Director of Major Projects and Technical Activities Financial Accounting Standards Board

Re: File Reference 1082-200

Dear Sir or Madam:

We have read your proposed interpretation entitled Consolidation of Certain Special-Purpose Entities, and respectfully submit the following comments for your consideration.

LNR Property Corporation is a \$3 billion public company traded on the New York Stock Exchange that invests in commercial real estate properties, commercial real estate loans, and commercial mortgage backed securities ("CMBS"). As an investor in CMBS, LNR purchases the unrated and non-investment grade rated securities issued by CMBS trusts, and an affiliate of LNR, Lennar Partners, Inc., provides special servicing services for the securitizations in which LNR invests. As special servicer, Lennar Partners, Inc. specializes in maximizing returns on defaulted loans through actions that are permitted by the pooling and servicing agreement such as foreclosure or work out of the loan.

The CMBS trusts in which we invest would be characterized as financial special purpose entities (SPEs) under the provisions of this proposed interpretation. Some of them are qualified special purpose entities that hold financial assets, and the remainder are SPEs that hold financial assets and otherwise meet the requirements of ¶22(b).

We understand that the proposed interpretation would require that an entity consolidate a financial SPE if the entity in question met two of three conditions. We request that the Financial Accounting Standards Board ("FASB") further clarify the three conditions outlined in ¶23. Specifically, we require further clarification on the following:

1. Condition (a) states that [the entity] has authority to buy and sell assets for the SPE and has sufficient discretion in exercising that authority to significantly affect the revenues, expenses, gains and losses of the SPE. Although a special servicer of a CMBS trust has the authority to sell assets, particularly real estate owned subsequent to foreclosure, on behalf of the SPE, they do not exercise any significant discretion in doing so. The special servicer's actions are limited

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by the provisions of the pooling and servicing agreement, and they are only permitted to take action on any specific underlying loan when certain pre-defined events beyond the special servicer's control have occurred. Most CMBS trusts are structured to meet the definition of a qualified special purpose entity, and accordingly the special servicer's actions are very limited and entirely specified in the pooling and servicing agreement or the trust indenture. The special servicer has very little discretion in performing its services to the CMBS trust. Accordingly, we request that the FASB clarify with is meant by the term sufficient discretion, and also that the FASB clarify that this condition was intended to apply to an entity with significant discretion over both buying and selling, and not to the necessary, restricted activities of a special servicer.

2. Condition (c) states that [the entity] receives a fee that is not market based. In the CMBS marketplace, the special servicer fees are negotiated distinctly and separately from the price negotiated for the bonds. The fee structures on these transactions are fairly similar from one transaction to another, regardless of which entity is elected special servicer, and accordingly can be shown to be market based. However, we feel that \$\frac{1}{2}\$ so confuses the issue somewhat. \$\frac{1}{2}\$ 19 states that contracts to provide services to an SPE in return for a fee negotiated at arm's length under competitive conditions (a market-based fee) are not variable interests unless the holder has an investment at risk. Because it is standard practice in our industry that the majority holder of the most subordinate classes of the CMBS trust elect the special servicer, and in many cases the holder of the most subordinate class will elect an affiliated entity to perform those services, this paragraph suggests that the contracts for special servicing activities are a variable interest in the CMBS trust. However, the proposed interpretation is not clear on whether contracts to provide services, which constitute a variable interest, are presumed to include non-market based fees.

We feel that ¶19 should be split into two separate sections. The first, addressing market-based fees, should refer to ¶23(c) as one of the criteria defining whether a financial SPE should be consolidated. The second, addressing the fact that contracts for special servicing activities constitute a variable interest if the recipient has other interests in the financial SPE, should be separate and distinct, and not affect the determination of whether or not the fees are market based.

We appreciate the opportunity to submit comments on this proposed interpretation, and look forward to further clarification on the issues raised. If these issues are not clarified as proposed in this letter, the effect on LNR's financial statements will be profound. LNR is invested in approximately 78 different CMBS trusts where Lennar Partners, Inc. acts as special servicer. These trusts have issued bonds with face amounts aggregating approximately \$67 billion. If we were required to consolidate these transactions, our balance sheet would grow from our current \$3 billion in assets to approximately \$70 billion, and our current \$1.7 billion in debt to approximately \$68.7 billion. However, we would have no economic interest in the bonds that we do not directly own, and the corresponding debt would have no recourse to us at all. We believe the consolidation of these transactions would render our financial statements meaningless to our financial statement users.

The assets or bond classes we would be consolidating are completely outside of our control. We would not have control over our own balance sheet as follows:

- We do not receive the cash distributed to the owners of the classes we do not own, we do not have control over the bonds we do not own and we do not perform the accounting for the CMBS trust.
- It is possible for the majority holder of the most subordinate class of the CMBS trust to change
 during the life cycle of a securitization (i.e. due to bond losses). As mentioned earlier, the
 majority holder of the most subordinate class of the CMBS trust elects the special servicer.

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Therefore, it is possible on for the consolidation requirement to shift abruptly from one party to another.

It would be extremely difficult for us to report timely, as we would be required to wait for 78
different trustee reports each month to understand whether or not we were still the majority
holder of the most subordinate class of the CMBS trust and if so, what figures we would need to
consolidate.

Due to the profound effect the consolidation of CMBS trusts in which we invest and special service would have on LNR's financial statements, we greatly appreciate you taking the time to consider our comments on this proposed interpretation.

Kind regards,

Shelly Rubin, CFO LNR Property Corporation