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File Reference No. 1082-200: Proposed Interpretation, Consolidation of Special-Purpose Entities, an interpretation of ARB No. 51

Dear Ms. Bielstein:

Credit Suisse Group ("CSG") appreciates the opportunity to comment on the Exposure Draft on Consolidation of Certain Special Purpose Entities, a Proposed Interpretation of ARB 51 (the "Exposure Draft" or the "Proposal"). CSG is responding to the Proposal both as a preparer of U.S. GAAP financial statements as well as an intermediary, through our subsidiary Credit Suisse First Boston, in the financial markets

We support the Financial Accounting Standards Board's ("FASB") efforts to bring resolution to the issues surrounding the U.S. GAAP treatment of SPEs. Given the economic importance of SPE transactions, we urge the FASB to consider constituents' additional comments to ensure that the final standard is operationally and conceptually sound, as well as supportive of legitimate uses of SPEs.

CSG was an active participant in preparing the American Securitization Forum's ("ASF") response to the Exposure Draft. Accordingly, numerous recommendations contained in this letter are consistent with the ASF recommendations.

Our letter is organized as follows:

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# I. Summary Comments

CSG agrees with the FASB's assessment that SPEs may be structured to serve the purpose of another enterprise by means other than voting interests. We support the Board's goal of identifying these parties, referred to as 'variable interest holders', that may be required to consolidate an SPE notwithstanding their lack of voting interests. While we agree with some of the underlying concepts included in the Proposal, we have numerous concerns with the proposed guidance, summarized as follows:

- We do not believe the proposed guidance of consolidation based on variable interests is always consistent with identifying a party with a controlling financial interest since it bases an enterprise's consolidation "decision" on external factors outside of the control of the potential consolidating entity. We are also concerned that the lack of a minimum threshold before consolidation is required will result in misleading financial statements, and will impair comparability among entities. Further details of these concerns and recommendations are set forth in section II.
- The Proposal's guidance is not sufficiently robust with respect to SPEs that hold certain financial assets to enable entities to conclude that legitimate risk dispersing entities need not be consolidated by any party. Examples of such SPEs are collateralized debt obligations ("CDOs") and commercial paper conduits. While we recognize that the FASB has made efforts to consider constituents comments in this area, we still have significant concerns with the proposed guidance. One of our primary concerns is the risk that the model may require an entity to consolidate an FSPE when the consolidating party may not have a significant interest in the ongoing results of the SPE. Our detailed concerns and recommendations on paragraphs: 22 and 23 are set forth in section III.
- The restrictive nature of the Proposal's guidance on consolidation based on voting
  interests will have the result that this approach will have minimal applicability to SPE
  transactions. In section IV, we describe our concerns and suggestions to make this
  approach more appropriate.
- Section V includes other comments, including comments related to market-based fees, related parties, expected future losses, disclosures, effective date and transition.

#### II. Consolidation Based on Variable Interests

The FASB is addressing the issue of consolidation of SPEs separately in this Proposal due to the inherent difficulties in applying a traditional voting interest model for identifying the appropriate party to consolidate an SPE. We agree that other interests must be considered when determining the party to consolidate an SPE. However, after the relevant variable interests are identified, the model in the Proposal significantly diverges from the overriding concepts in ARB 51 since the model in the Proposal: (i) can force an entity to consolidate an SPE due to external factors and (ii) the proposed guidance does not have a requisite minimum threshold of variable interests that an entity should have before consolidation is required. Accordingly, as demonstrated by the following examples, we believe that the guidance relating to consolidation based on variable interests will require a party to consolidate an SPE without demonstrating that the party has a significant controlling financial interest.

# Example 1

#### Scenario:

- At the inception of a transaction, the subordinated noteholders, the lowest tranche of
  investors, were identified as the variable interest holders that are the potential primary
  beneficiaries of the SPE. This identification is based upon the expectation that these
  interests are expected to be equal to the future expected losses of the SPE.
- Initially, these interests are owned equally by three subordinated noteholders, A, B, and C. None of these parties have control over any of the activities of the SPE. Since the interests are equally owned and no party owns significantly more than the other, no party is required to consolidate the SPE at inception.
- By the end of the following reporting period, investors A and B have sold half of their investment, but investor C has not changed its level of its holdings. All three winvestors' decisions are made independently and without any concern about the actions of the other investors.

# Impact of Proposed Guidance:

Under the proposed guidance, investor C would be required to consolidate the entire balance of assets and liabilities at the end of the following reporting period merely based on the actions of others though no substantive changes in the transaction have occurred. We do not believe that the investment decisions of third parties provide a reasonable or operational (discussed further below) basis for identifying whether an entity is the primary beneficiary.

### Example 2

## Scenario:

At the inception of the transaction, the subordinated noteholders, the lowest tranche
of investors, were identified as the variable interest holders that are the potential

primary beneficiaries of the SPE. This identification is based upon the expectation that these interests are expected to be equal to the future expected losses of the SPE.

- As a result of market moves or alternatively the assets have not performed as
  expected, the subordinated investors owners lose the entire value of their investment
  sooner than expected.
- At the next reporting date, since the subordinated noteholders have lost their investment, the concept of expected future losses is now moot for that class.

# Impact of Proposed Guidance:

After the subordinated noteholders have lost their investment, the proposed guidance suggests that you then look to a further investor class or other parties possessing a variable interest, and one of these further parties would become the next primary beneficiary. Further complexity is added in the case of temporary market losses, which could lead to different primary beneficiaries from period to period. This resulting dynamics in the "ownership" of an SPE will cause confusion among financial statement users. As a result, we do not believe that it is appropriate to allow market movements to affect the determination of the party to consolidate an SPE.

The above examples demonstrate how under the Proposal an enterprise would not be in a position to control or predict when it is required to consolidate an SPE. This inappropriate result is an indication that the proposed model does not necessarily identify the party with a controlling interest. In our view, a prerequisite of a 'controlling financial interest' is the ability to control the events that would trigger the requirement to consolidate the SPE.

Further, since there is no minimum threshold requirement before consolidation is required, we believe the variable interest model can lead to confusing results that will impair comparability between reporting entities. Consider the following comparative example:

- Assume Company A holds 25% of the variable interests of SPE\*1. If the remaining 75% of the interests were widely dispersed, Company A would hold significantly more than any other investor and would be the primary beneficiary of the SPE 1. As a result, the 25% investment of Company A would trigger the requirement to consolidate the entire balance sheet and income statement of the SPE in their financial statements.
- Assume Company B held 25% of a similar, but not identical, SPE 2. There are three
  other investors each holding 25% of the variable interests of SPE 2. Since Company
  B does not hold significantly more than any other party, it is not considered the
  primary beneficiary and is not required to consolidate SPE 2.

The financial statements of the respective companies A and B will be drastically different even though the individual investments and lack of influence over the SPEs are virtually identical. The only difference relates to the allocation of the remaining variable interests. We do not believe that solely the distribution of the variable interests is justification for Company A to consolidate SPE 1, whereas Company B more appropriately only accounts for its individual investment in SPE 2. In our view, Company B's financial statements are more meaningful than the inflated financial statements of Company A. We believe

this scenario demonstrates that the proposed model will cause confusion for users of financial statements since there is no consistent, objective manner for an investor to determine whether an individual entity should be consolidating an SPE.

We also note that there are significant operational burdens associated with the proposed variable interest model. Since the consolidation assessment must be made each period end (considering the relative holdings of others as well as the results of a recalculation of the expected future losses), entities will not be able to predict whether it will be required to consolidate (or deconsolidate) an SPE. To state the obvious, consolidation of an SPE can have serious consequences, including capital implications, and can hinder an enterprise's ability to meet critical reporting deadlines.

With respect to identifying whether an entity has an interest that is significantly more than others at any given time, the Proposal indicates that an enterprise is not expected to engage in an "exhaustive" search for information about the actions of other unrelated parties. We do not believe that much relief is given here, as enterprises will nonetheless be required to document a sufficient level of investigation to determine the holdings of other parties. In our view, it is an unnecessary burden for passive investors to be required to track the holdings of other parties in order to make its individual consolidation conclusions. Further, many investments are held in nominee name only, making the identification of individual investors difficult. We believe that our recommendations later in this section would alleviate the burdens, while providing a conceptually sound framework.

#### **Derivatives as Variable Interests**

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We have concerns about the implication of the variable interest model to derivative counterparties. SPE's may enter into derivatives with counterparties to modify asset cash flows in order suit the beneficial interest holder. The SPE may have one or multiple counterparties that could cover one to all of the assets in the SPE. There could be assets in SPEs that are less risky than the risk the swap counterparty takes on, but that does not provide evidence that the derivative counterparty is the primary beneficiary. We do not believe that it is appropriate to conclude that a payment on a swap, where the terms and pricing of the derivative contract consider all potential cash inflows and outflows, should be considered a variable interest which provides primary financial support to the SPE. The swap counterparty is not losing an investment – it is performing pursuant to a market-based negotiated contract. Further, over time, as markets fluctuate, it is possible that the expected losses on the derivative can exceed those of the investor.

There are also operational issues associated with the potential requirement of a quarterly calculation for each derivative. This would require each derivative counterparty to an SPE to perform a detailed analysis comparing the expected losses of the derivative to the future expected losses of other variable interest holders. The primary beneficiary can change from period to period depending on the results of that calculation. We do not believe this result would enhance transparency of financial statements.

It is our view that many derivatives should not be considered variable interests that could be the primary beneficiary if they are market-based contracts. We believe that the following factors would be indicators that a derivative counterparty would not likely be the primary beneficiary:

- There are subordinated investors in the SPE that have cash at risk, i.e., they have
  made an actual investment in the SPE that is at risk based on the assets and contracts
  entered into by the SPE.
- The derivatives are reported at fair value in the financial statements of the derivative counterparty in accordance with FASB No. 133, Accounting for Derivative Instruments and Hedging Activities.
- The derivatives do not revert substantially all of the risk and rewards of the assets to the derivative counterparty.

Of course, a final analysis would have to be made based upon all relevant facts and circumstances of a respective transaction.

If the proposed guidance on derivatives is issued as currently drafted, in the interest of ensuring an appropriate interpretation of the Proposal, we recommend that further guidance be given on the determination when a market-based derivative contract could trigger the entity becoming the primary beneficiary before a subordinated investor that has made an actual investment in the SPE. Further, we believe that the current draft wording in A3 relating to the activity of acting as a derivative counterparty should be deleted or revised. If the current draft wording is issued, we are concerned that the guidance may create an unfair bias that a derivative counterparty be presumed to be the primary beneficiary.

### Overall Recommendation on Consolidation Based on Variable Interests

To address the concerns identified above, we recommend the following changes.

Consolidation based on variable interests should be required only if an enterprise has a majority of those interests, while also considering the following:

- In order to determine the extent of its variable interest in an SPE, an enterprise should be required to make a qualitative assessment of all of its relationships with the SPE.
- If an enterprise has a significant non-majority share of an SPE's variable interests, the enterprise should be required to consider whether it nevertheless has a de facto controlling financial interest through other means. This analysis will require judgment based on the facts and circumstances of individual transactions.

The above recommended changes would result in requirements closer to the guidance for non-SPEs and, in our view, will allow for better operational control of consolidation requirements and provide more consistent, comparable financial reporting.

We also recommend that a thorough analysis be required at inception of the SPE to identify the one class that would be the probable beneficiary. This "class" does not necessarily have to be an investor, i.e., the analysis should consider all variable interests. Once the analysis is complete and the probable primary beneficiary is identified, this analysis should not change for the life of the transaction unless either (i) the entity modifies its interests or activities with the SPE or (ii) the transaction itself has changed to merit a new review. This recommendation is based on our strong view that market movements and changes in the ownership of other investors are not an appropriate basis for consolidating and deconsolidating as such events are outside of the supposed parent's control.

# III. SPEs That Hold Certain Financial Assets ("FSPEs")

We would like to first mention that from our perspective, it is extremely important to consider the meaningfulness of certain information to the users of financial statements. In our view, especially for certain SPEs that serve only to allocate the risks and rewards of financial assets (FSPEs), it is critical for investors to understand the respective entity's individual rights and obligations with respect to the SPE. In contrast, if an enterprise consolidates an FSPE, this could convey a confusing and misleading representation of an enterprise's financial position since it will inflate the entity's balance with assets not necessarily available to the entity's creditors and liabilities that are not necessarily obligations of the entity. Further, there is the potential for a distorted income statement that does not reflect the enterprises' true economic interests in the SPE. Therefore, especially for FSPEs, we reiterate that in many cases the reporting an enterprise's individual financial components is more meaningful than consolidation of the entire SPE. The superior relevance of such a reporting model should reduce the necessity for the accounting standards to identify a party that is required to consolidate an FSPE.

Our specific comments on the proposed ESPE model, as well as our recommendations, follow.

We agree with the concept of the FSPE model in an effort to address earlier concerns about the potential negative impact of the proposed guidance on common financial market SPEs. As accurately noted by the FASB in paragraphs B19 and B20, certain SPEs effectively diversify risks and potential benefits related to certain assets and activities, and, therefore, it is inappropriate for any party to consolidate the assets and liabilities of the SPE. However, for reasons set forth below, we do not believe that the resulting guidance in paragraphs 22 and 23 appropriately supports the concepts set forth in paragraphs B19 and B20.

# Paragraph 22

We believe that the primary difficulty arises from the starting point for the guidance in paragraph 22 – the QSPE. While we believe that QSPEs are a common type of risk diversifying SPEs, we do not believe it will serve as an appropriate starting point for

guidance that is intended to have a more far-reaching impact. The proposed guidance incorporates three variations from the QSPE model – an acknowledgement that the QSPE's restrictions will not adequately provide for other legitimate risk dispersing SPEs. Further, we do not believe that adequate analysis has been performed with respect to each QSPE condition to completely understand the extent to which the guidance may require modification to ensure broader applicability to parties other than the transferor.

Accordingly, we would suggest revising paragraph 22 to provide the conceptual basis and guidance to identify an SPE that appropriately disperses the risks and rewards of financial assets. Specifically, we suggest that paragraph 22 incorporate the following concepts:

- Certain SPE transactions serve to disperse the risks and rewards of financial assets.
   They serve to allocate cash flows of financial assets and modify or provide for risks in accordance with the substantive terms of entities' relationships with the SPE.
- If no party has an interest that effectively recombines substantially all of the risks and rewards of the SPE transaction, no party is required to consolidate an FSPE. Instead, all parties will account for their respective interests, i.e., apply the financial-components approach. If any relationships indicate that the SPE is not dispersing the risks and rewards of the SPE's assets to various (at least two) parties, or if any relationship effectively recombines risks and rewards that have been previously dispersed, the entity should not be viewed as an FSPE and all parties should apply the variable interest model.
- Judgment will be required in reviewing the substance of the transaction to ensure that
  its purpose is to allocate the risks and rewards of the assets among various parties.

We believe the above points would be consistent with the FASB's stated intent in paragraphs B19 and B20, and are also consistent with the FASB's stated goal of incorporating more principle-based standards.

If the Board does not accept our recommendations, we have the following comments on paragraph 22:

• The FSPE model should not have the QSPE limits on derivatives. The QSPE model has a bias that derivatives must counteract a risk in the assets in the SPE. Counteracting the risk in a financial asset is only one purpose of derivatives in common SPE transactions. Derivatives are an innovative tool to add risk synthetically, i.e., a credit default swap can be used to create a credit position just as an interest rate swap creates an interest position, without having to hold a cash asset. The beneficial interest holders are aware of the use of derivatives and in fact, are often the parties that are driving the characteristics of the derivative contracts. We have commented on our concerns with the QSPE limitations on derivatives in our letter to the FASB dated July 1, 2002 (File Reference No. 1100-163: Proposed Statement of Financial Accounting Standards, Amendment of Statement 133 on Derivative Instruments and Hedging Activities).

We believe that the only derivative limitations relevant in a risk and rewards dispersing model should be based on an analysis of whether the contract effectively recombines risks and rewards that were dispersed through the SPE transaction. If such arrangements exist, this may indicate that in fact the SPE is not dispersing the risks and rewards to various parties. The final conclusion will require judgment.

• We have also been monitoring the discussions taking place on EITF Issue 02-12, Permitted Activities of a Qualifying Special-Purpose Entity in Issuing Beneficial Interests under FASB Statement No. 140. The final conclusions on that issue could further restrict QSPE's in their ability to elect the terms of new beneficial interests. We do not believe those limitations should be imposed in FSPEs. The FASB has already indicated that FSPEs may not be restricted in sales of assets as are QSPEs, so logically the same answer should apply with respect to the liabilities.

### Paragraph 23

Paragraph 23 indicates that an enterprise provides significant financial support through a variable interest if they meet two out of three specific conditions. Our first concern with this guidance is that it states the interest should be "significant," but the two out of three tests do not ensure that is the case. In fact, paragraph 23 can result in a party consolidating the SPE without any significant ongoing variability in the results of the SPE. For example, assume that it is concluded that the SPE is an FSPE. Each party with a variable interest must then analyze the conditions as in paragraph 23. Assume that one party facing the SPE has the following two roles: (1) it is hired to make decisions about purchases and sales of the assets in the SPE (meets proposed paragraph 23a), and (2) is one of several providers of credit enhancement facilities (meets proposed paragraph 23b). Under the proposed rules, while the entity may not have any significant exposure or rewards from the ongoing activities of the SPE, it would be required to consolidate merely because it met two out of three conditions. There are numerous other iterations that could arise that produce a similar inappropriate conclusion.

Therefore, at a minimum, we recommend that before a party is required to consolidate an FSPE pursuant to paragraph 23, it should have at least a majority of the variable interests in the SPE. Accordingly, the revised guidance in paragraph 23 would only require consolidation of an FSPE if (i) an enterprise holds a majority of the variable interests and (ii) the enterprise meets two out of the three conditions of paragraph 23 (subject to our comments below).

Our second concern is that paragraph 23 (a) to (c) appear disconnected and lack a consistent conceptual theme. We recommend that explanatory language be provided that demonstrates the relevance of how these conditions indicate that the party provides significant financial support to the SPE.

We have the following detailed comments on paragraph 23(a), (b) and (c):

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- 23a. The ability to purchase and sell assets in and of itself does not provide evidence that the party making decisions provides financial support to the SPE that justifies consolidation. Parties can be hired to make decisions on behalf of investors. In fact, the investors may have the right to remove the party making decisions, which we believe provides strong evidence that the party making decisions should not consolidate the SPE. Further, there may be decisions permitted, but these may be subject to an explicit, defined and documented set of parameters agreed to by various parties. We believe that either (i) the ability for the party exercising decision making authority to be removed by third-party investors with a vested interest or (ii) the parameters for decisions being detailed in the original documentation are factors that provide support that 23a has not been met. We recommend that the FASB include these concepts in 23a.
- 23b. An investment in the subordinated interest represents an interest in the risks and benefits that have been dispersed through the SPE transaction. We do not believe such an investment should be viewed as an indicator that an entity should be required to consolidate an SPE. If this draft guidance is issued, this condition will be very problematic for CDO asset managers, which are typically required to hold subordinated interests to ensure they are properly aligned with investors' interests.
- 23c. It is not clear in the guidance why a conclusion whether a fee is market-based
  impacts the consolidation analysis. Please refer to our comments above for our
  overall concerns that more conceptual support relating to the relevance of marketbased fees is required.

# IV. Consolidation Based on Voting Interests

As demonstrated by our comments below, if the current draft guidance is not revised, we expect there may be limited applicability of the voting equity exception.

- We are concerned with the requirement that the equity must equal the expected future losses at all times during the SPE's existence. This is an onerous requirement, which is not comparable to equity requirements of operating entities. If an equity owner makes an investment that loses its value, this does not necessarily indicate that party is no longer an equity owner. The investors are aware of the risks and rely on the discrete pool of assets and contractual arrangements with no recourse to any party to the SPE. Further, unlike operating entities, an SPE may not need further equity to sustain its operations. Therefore, we believe the assessment of whether the equity is sufficient should only be done at inception unless either (i) the entity modifies its interests or activities with the SPE or (ii) the transaction itself has changed significantly to merit a new review.
- Paragraph 9(d). We find paragraph 9(d) unclear and suggest that guidance be provided regarding the term "subordinated." One could interpret this as the lowest

rated (or unrated) investors, or alternatively to also include investors that are senior to certain classes but subordinate to others.

- Paragraph 9(e). We believe that the wording in paragraph 9(e) implies that an equity investor can only be an equity investor, i.e., that party cannot have any other variable interest in the SPE. Once any equity holder held any other variable interest, the entire SPE could no longer be reviewed for consolidation based on voting interests. If that was not the intent of the Proposal, we request that the guidance in this paragraph be clarified. However, if this was the intent of the Proposal, this would be an onerous requirement that would impose constraints that are not present in other consolidation guidance. We believe there is no conceptual basis for these limitations. This guidance, if unchanged, will render the voting interests approach option unworkable for any asset manager required to hold an equity interest, no matter how small.
- We are concerned with the proposed guidance in paragraph 11 that states that the equity in an SPE should be comparable to the equity levels of a substantive operating entity. We believe the 10% level is arbitrary and should be removed. Further, comparing a limited purpose SPE (e.g., with one stated goal and often limited resources) to a substantive operating entity with broad power to deploy its resources to various businesses and transactions is not appropriate. We recommend that the requirement to compare to a substantive operating entity be removed, and be replaced with a relevant standard, which would be in comparison to other similar SPEs.

## V. Other Comments

### Market-based Fees

We do not believe that there should be a presumption that a fee is not market-based. If the current requirement to compare the fee to "similar observable arm's length transactions" to overcome the presumption that a fee is not market-based is retained; this provision may prove not to be operational. It may be very difficult to find similar observable arm's length fees since many SPE transactions, while similar, can possess unique facts and circumstances that merit a different fee structure. Additionally, since the determination of whether a fee is market-based is dependent upon existing market conditions at a point in time, the use of past transactions as an indicator of whether fees on current transactions are market-based is faulty. This matter is compounded in instances when no identical or similar transactions exist concurrently in the marketplace. Finally, details on the fees charged by competitors are often not available.

If this presumption is retained in the final guidance, we believe that the ability to overcome the presumption should be based on qualitative factors, including:

- Evidence the fees were determined based on negotiations among at least two
  parties that have a vested interest in the SPE transaction; and
- The presence of similar transactions in the marketplace supporting the assertion that market competition influences the fee structure.

We also believe the concepts in paragraph 19 and their impact on the guidance in paragraph 23c needs to be improved to ensure that a solid basis is provided to apply the relevant guidance appropriately. The first sentence of paragraph 19 states that market-based fees for services should not be considered variable interests. It then states that if the service provider has any other interest, the market-based fee must be considered a variable interest. We do not object to that guidance, however, we are aware that some have been interpreting the guidance in paragraph 19 to imply that once a fee is a variable interest there is a presumption it is not market-based, and this presumption could not be overcome. We do not believe this is the intent of the Proposal and request that this be clarified in the final guidance.

We also believe that the Proposal does not provide sufficient clarity as to the relevance of a market-based fee to the overall consolidation analysis. To provide further clarity and address the fundamental concerns with paragraph 19, we request that paragraph 19 be revised to clarify the relevance of market-based fees in the variable interest model and regarding the reference to market-based fees incorporated in paragraph 23(c).

### **Modified Definition of Related Parties**

Paragraph 15(e) indicates that a party has a de facto agency relationship with the enterprise as a result of providing a significant amount of professional services or similar business arrangements. Large organizations like CSG provide many professional services for clients. This fact should not however preclude CSG or its clients from making independent investments in SPEs set up by either party. We believe that the draft guidance in paragraph 15(e) will have a broad impact and is a significant change in the concept of related parties. Therefore, we believe that this guidance should be omitted from the final standard. Rather, we suggest that related party relationships and related concerns be addressed separately if deemed necessary.

### **Expected Future Losses**

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In footnote 3, which indicates how to define expected future losses, it states that future losses should be calculated "without considering possible gains." This guidance is relevant throughout the Proposal. For example, paragraph 9b requires that an equity investment be greater than or equal to expected future losses of the SPE at all times during the SPE's existence. If possible gains cannot be considered in the expected loss calculation, some may interpret this guidance to suggest that if the SPE held a portfolio of assets, the equity investor would be required to look at the expected performance of the individual assets and ignore the assets that were expected to produce gains. We do not believe this is the correct analysis since the equity investor is entitled to the net results of all of the aggregate positions in the SPE. We believe that expected losses should be based on the net amounts that are associated with an investment or contract. If this interpretation is correct, we request that clarification be included in the final guidance. If, however, a differing interpretation is intended, specific guidance is needed to identify the possible gains to be excluded when an enterprise is valuing the expected future losses of its investment in an SPE.

#### Disclosures

Our comments on the proposed disclosures are as follows:

## Paragraph 24

We believe that if an enterprise consolidates an SPE, additional disclosures to segregate the assets and liabilities of these entities are not particularly relevant. If the purpose of such disclosure is to identify assets not 'truly' assets of the company and liabilities not relying on company resources to be settled, than the consolidation decision was most likely inappropriate. We urge that the financial-components approach for these FSPEs be considered, with disclosure of material relationships if they are not otherwise disclosed in the financial statements. We think the financial-components approach, whereby an entity only reports its individual rights and obligations with the SPE, is more relevant that requiring financial statement users to determine for themselves which assets and liabilities are really those of the consolidating entity.

# Paragraph 25

As currently drafted, we do not believe that paragraph 25 request information that will necessarily improve the financial statement user's ability to understand an entity's financial position. There should not be additional disclosures unless these provide value. We are concerned that the disclosures required for enterprises providing "significant administrative services" (undefined in the Proposal) would include a significant amount of activity that will not provide meaningful information relating to the ongoing economic exposure for the entity. For example, some may view a trustee as providing administrative services to an SPE. We believe that reporting the assets and liabilities of SPEs where an entity is trustee would be largely irrelevant in the analysis of an enterprise's financial position. Similarly, we do not believe it is meaningful for an entity to be required to disclose the assets and liabilities of SPEs where an entity has placed interests, since these amounts also have no relevance to the ongoing results of the entity. The resulting balances could be significant, and such disclosures could lead to incorrect assumptions that the disclosed amounts impact the performance of the reporting entity.

We request that further due diligence be performed to ensure that the disclosures required in the final standard provide meaningful information for the financial statement users. We believe that additional disclosures will not necessarily enhance the quality of reported information or will aid investors in gaining an accurate understanding of the financial position of an entity.

#### Effective Date and Transition

We recommend that the guidance be effective for new transactions beginning in the first fiscal period beginning more than two months after the final interpretation is released; and for existing SPEs (including new transactions completed between the issuance and effective date of the new rules) be effective for interim or fiscal periods beginning after November 15, 2003.

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We appreciate the FASB's consideration of our comments and recommendations and support the goal of improving accounting rules to improve financial reporting. We hope the FASB considers our comments to ensure that legitimate SPE transactions, that have far-reaching benefits for many market participants, are not unduly harmed by the implementation of new rules. If entities are required to consolidate common and market-accepted SPEs, this could force certain competitors out of the market as well as impact the overall liquidity available in the financial markets. We urge that these serious consequences be considered. Please do not hesitate to contact Ken Evola at (212) 325-7382 or Todd Runyan in Zurich at 41-1-334-8063 with any questions or comments.

Sincerely,

Rudolf A. Bless Managing Director, Chief Accounting Officer

Julie D. Roth Vice President, Group Accounting Policies