CAPITAL GUARDIAN TRUST COMPANY

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**Letter of Comment No: 60**
**File Reference: 1082-200**
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Ms. Suzanne Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Via Email

Re: File Reference Number 1082-200

Dear Ms. Bielstein:

Capital Guardian Trust Company ("CGTC") serves as a collateral manager to certain issuers of collateralized debt obligations ("CDOs"). CGTC appreciates the opportunity to submit this comment letter regarding the Exposure Draft of the Proposed Interpretation on Consolidation of Certain Special Purpose Entities (the "Exposure Draft"). CGTC supports FASB's efforts to improve financial reporting by enterprises involved with special purpose entities ("SPEs"). As discussed below, however, CGTC recommends that FASB revise the Exposure Draft to ensure that collateral managers of CDOs consolidate those CDOs only when it is appropriate to do so.

## A. Investment "at risk"

Specifically, paragraph 19 of the Exposure Draft provides that service providers to an SPE who receive market-based fees will not be deemed to have variable interests unless they have investments at risk or can be required to transfer certain assets to the SPE or related parties. CGTC agrees with FASB that service providers should not be deemed to have variable interests where the service provider does not have such investments at risk or such transfer obligations. While many collateral managers purchase securities issued by the CDOs which they manage, CGTC does not.

Paragraph 19 of the Exposure Draft also states that if the amount of a service provider's fee is variable and it can be demonstrated that the service provider made a significant incremental investment in its own business in order to earn the fee, that investment also should be considered in determining if the enterprise has a variable interest. Collateral managers regularly make incremental investments in their businesses in order to earn variable fees, whether those fees come from collateral management for CDOs or ordinary investment management services. As an investment adviser for its non-CDO clients, CGTC has investment discretion over the assets of clients which are owned and controlled by parties independent of the collateral manager. This is also true of CGTC's CDO business. There is no more reason for CGTC to consolidate a CDO client than there is for it to consolidate any other independent client.

CGTC requests that FASB clarify that collateral managers who do not hold securities issued by the CDOs which they manage do not hold variable interests and should not consolidate those CDOs even if the collateral managers make significant incremental investments in their own business, regardless of whether the fees they receive are market-based.

**B. Market-based fees**

If FASB retains the market-based fees requirement, CGTC requests that FASB make certain amendments to the definition of market-based fees in the Exposure Draft. FASB should clarify that fees, including incentive fees, negotiated between a collateral manager that does not and will not hold any securities issued by the CDO on the one hand, and the underwriter of the CDO on behalf of the issuer and the investors in the issuer on the other hand, will always be considered market-based. In this situation, the fee negotiation is truly arm's length. The underwriters have the interests of potential investors at stake, because the underwriters will not be able to place the securities issued by the CDO if the collateral management fees are not acceptable, and the collateral manager has its own interests as a service provider, and not as an investor, at stake. To require that the collateral manager rebut a presumption that fees are not market-based by pointing to an observable market for fees is not practical. CDO transactions are privately negotiated and the terms are not available to the public. Collateral managers cannot be able to collect enough information to determine what is or is not standard in the market with regard to fees. Collateral Managers must simply independently negotiate one-on-one with the underwriters in any given transaction based on their own experience and assumptions about the transaction.

FASB had expressed the view in the past that the ability to replace a service provider without cause is an indication that the provider's fees are market-based. CGTC strongly agrees with this view and urges FASB to include this provision in the final interpretation if it retains the market-based standard. When the investors in a CBO can remove the collateral manager at any time without cause, that collateral manager's fees are effectively up for renegotiation continually. If the investors believe the collateral manager's fees are no longer consistent with current market practice, the investors may replace the collateral manager with a new collateral manager at a more acceptable fee structure. Therefore, the collateral manager's fees are always subject to the control of the independent investors, and must be considered market-based. This is especially true when the collateral manager does not invest in the CDO itself, or when the collateral manager is barred by the terms of the agreements from voting with regard to removal without cause.

CGTC therefore requests that FASB revise the Exposure Draft to provide that (i) fees paid to a collateral manager by a CDO in which the collateral manager does not invest shall be deemed to be market-based and (ii) fees paid to a collateral manager that can be removed without cause by the investors in a CDO shall be deemed to be market-based.

Thank you for your consideration of these issues. Please feel free to call the undersigned at (310) 996-6017 if you would like to discuss the foregoing.

Sincerely,

Mark E. Brubaker