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WACHOVIA

July 1, 2002

Ms. Suzanne Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
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Norwalk, CT 06856-5116

RE: FASB Draft, *Questions and Answers Related to Derivative Financial Instruments Held or Entered into by a Qualifying Special-Purpose Entity (SPE)*

Dear Ms. Bielstein:

Wachovia Corporation is pleased to comment on the FASB's Draft, *Questions and Answers Related to Derivative Financial Instruments Held or Entered into by a Qualifying Special-Purpose Entity (SPE)* ("Draft Q&As"). We support the FASB staff's efforts to clarify the interaction of the guidance in Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, ("Statement 140") for Qualifying Special-Purpose Entities ("QSPEs") with Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities* ("Statement 133"), as amended and interpreted. However, we disagree with the model proposed by the FASB staff in the Draft Q&As and encourage the Board and the staff to reconsider its tentative conclusions.

First, although we acknowledge that Statement 140 prohibits an SPE from being a QSPE if it holds a derivative instrument that pertains to a derivative instrument issued, we are unclear how that guidance can be applied consistently. To highlight our concern, consider the conflicting answers to Examples 1 and 2 in Question 4. Both examples have bonds and a derivative instrument transferred to the SPE. The beneficial interests ("BIs") that the SPE issues could both be considered "indexed debt," whereby the SPE is merely passing the economics of the net holdings of the bonds and the derivative instrument to the beneficial interest holders ("BIHs"). However, because of the FASB's rules on "clearly and closely related" in Statement 133, the SPE can be a QSPE in Example 2 (holdings of fixed rate Treasury bonds and an interest rate swap, with floating rate BIs issued), but not in Example 1 (holdings of Treasury bonds and an S&P 500 forward, with equity-linked BIs issued). We are unclear why the determination of whether an

SPE is a QSPE is dependent on how Statement 133 is applied to the BIs issued. Neither issuances of the BIs in these two examples causes the SPE to make any decisions whatsoever; they merely provide the BIHs with "indirect ownership...of the assets held by the qualifying SPE," in accordance with the basis for conclusions of Statement 140.

We suggest that the Board reconsider the "pertain to" rules for derivative instruments in QSPEs because of the lack of a conceptual basis for the rule and the inconsistent results for similar structures. We believe the accounting for beneficial interests, among other issues, should have a foundation in the FASB's conceptual framework to ensure comparability between economically similar structures. We understand that the Board does not want to reopen Statement 140 for possible amendment, but we believe that the model proposed by the Draft Q&As does, in fact, amend Statement 140 without due process. BIs issued by QSPEs are not analyzed from the perspective of a hypothetical application of Statement 133 to the QSPE. We suggest that the Board not consent to the issuance of the Draft Q&As and provide for greater research by the FASB staff on the issue so that a significant number of QSPEs, which truly operate on "autopilot", are not arbitrarily disqualified.

Second, we are unclear how to apply the overall model to different types of transactions and believe additional examples would be helpful. As an example, consider a transaction where prime-based loans are transferred to a QSPE and LIBOR-based BIs and a residual tranche are issued. One application is that the investor in the residual has a variable rate debt host and a bifurcated basis swap. If this interpretation is correct and the investor in the residual is the transferor, then we are unclear whether this bifurcation by the transferor will disqualify the SPE from being a QSPE.

We do not believe that an analysis of beneficial interests issued by a QSPE under the guidance in Statement 133 is applicable in determining whether an SPE is a QSPE. If the activities of a QSPE are, in fact, limited and do not involve any decision-making on the part of the QSPE, then we are unclear what the basis is for the staff's belief that the QSPE is disqualified. The investors in the beneficial interests bear all of the risks and rewards of the beneficial interests, not the QSPE.

Third, the model proposed by the Draft Q&As is dependent, in part, on the accounting by the investor in the BIs issued by the QSPE. Although an evaluation can be done on whether the BIs issued by a QSPE are hybrid instruments that would require bifurcation of any embedded derivatives (if the QSPE actually prepared financial statements in accordance with generally accepted accounting principles), the QSPE will not necessarily ask each BIH how their BI will be classified under Statement 115. Whether a BI is classified as either trading or AFS determines how Statement 133 is applied to that BI. If, for example, a BI is classified as trading, then the BIH does not bifurcate any embedded derivatives. This issue further illustrates our concern around attempting to analyze BIs issued by an SPE under Statement 133 to conclude whether that SPE is a QSPE. The QSPE analysis should be based on the overall economics of the transaction, not classification by the BIH.

We support clarification of the guidance between Statement 140 and 133, but we recommend that the above issues be addressed prior to adding to the Draft Q&As.

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We would be pleased to address any questions you may have regarding the comments in this letter or to discuss our position in more detail at your convenience. I can be reached at 704-383-1293 or by email at lynn.rogers@firstunion.com.

Sincerely,

B. Lynn Rogers
Senior Vice President
Director of Accounting Policy

cc: David Julian, Senior Vice President and Controller, Wachovia Corporation