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Financial Accounting Standards Board  
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Dear Ms. Bielstein:

We are pleased to have the opportunity to submit our comments on the Exposure Draft of the Proposed Interpretation, *Consolidation of Certain Special-Purpose Entities*.

We firmly support the notion that a primary beneficiary should consolidate a special-purpose entity (SPE). However, we believe the Exposure Draft will not achieve this simple objective. Further, we find the guidance in the Exposure Draft to be more complex than necessary. Finally, we believe that the guidance is not clearly written and thus, subject to manipulation to achieve desired results (i.e., avoiding consolidation of the SPE). As presently written, we believe the proposed Interpretation will lead to less consolidation of SPEs than present standards would require and numerous implementation issues. Significant diversity in practice will likely arise as companies attempt to engineer around the proposed guidance.

To achieve the ultimate goal of providing workable guidance that will be applied consistently between companies to achieve similar results for similar transactions, we believe that the Board should make the following fundamental changes to the Exposure Draft:

- The Board should change its approach in providing the guidance. Rather than providing conditions that a company must fail in order to consolidate based on a variable interest, the guidance should start with the notion that if a company is the primary beneficiary of an SPE, it should consolidate the SPE. If there are substantive factors that can mitigate consolidation (and we believe there should be very few of those), they can be listed or enumerated in examples. In essence, we believe that primary beneficiaries should consolidate all SPEs with the exception of those presently listed in paragraph 8(a) and 8(b) of the Exposure Draft. We firmly believe that a company's attempts to remove assets and liabilities from its

financial statements via special purpose entities while at the same time bearing the risks and reaping the upside benefits does not allow owners and lenders to adequately determine the true operations of the business. Starting with the requirement that a primary beneficiary should consolidate its SPEs could eliminate most of the guidance in the Exposure Draft and provide consistent application of the guidance among companies.

- The Board should eliminate the exception in paragraph 8(c). An SPE should be consolidated by its primary beneficiary, even if the SPE is majority owned by a substantive operating enterprise. The exception in paragraph 8(c) may lead to well capitalized enterprises, particularly private enterprises, generating income by agreeing to own majority stakes in SPEs that primary beneficiaries do not want to consolidate. It is the relationship of the primary beneficiary to the SPE that should determine consolidation, not the identity of the other owners of the SPE.
- Paragraph 12 should be changed from a presumption that 10 percent equity is needed to an absolute requirement that 10 percent equity is needed. The presumption may create an incentive for primary beneficiaries and their advisers to develop creative examples of thinly capitalized businesses that engage in transactions similar to the SPE. The Exposure Draft as written is unclear about what evidence is persuasive. Is it sufficient to identify the two or three most thinly capitalized enterprises that engage in transactions similar to the SPE, or does the primary beneficiary need to demonstrate that the average capital of all businesses engaging in similar transactions is less than 10 percent?
- The Exposure Draft creates at least five categories of entities—qualifying SPEs as defined in FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, “financial SPEs” as defined in the Exposure Draft, all other SPEs, substantive operating enterprises, and non-substantive operating enterprises (operating businesses that do not have enough equity to meet the definition of a substantive operating enterprise). We believe three categories would be enough and would make the standard easier to understand and to apply consistently: businesses as defined in EITF Issue No. 98-3, “Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business,” qualifying SPEs as defined in Statement 140, and all other SPEs. That is, if an entity is not a business as defined in EITF Issue No. 98-3 and is not a qualifying SPE as defined in Statement 140, then it is a SPE in the scope of the Exposure Draft.
- The Board should carefully reconsider the guidance to require a company to initially measure the assets, liabilities, and noncontrolling interests of the SPE at fair value at the time the company first consolidates an SPE under the new standard. We believe that this is an exception to the normal measurement approach followed under historical cost accounting (e.g., change in reporting entity under APB Opinion No. 20, *Accounting Changes*, or the transition requirements of FASB Statement No. 94, *Consolidation of All Majority-Owned*

*Subsidiaries*). The approach in the Exposure Draft seems to allow the primary beneficiary to step-up assets that have been under its control of the since the inception of the SPE.

We would be pleased to discuss our comments further with the FASB staff or the Board. Please contact Frank Scheuerell at (212) 885-8194 if you wish to discuss the issues raised in this letter.

Very truly yours,

s/BDO Seidman, LLP