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August 26, 2002

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

RE: File Reference No. 1082-200, Proposed Interpretation, Consolidation of Certain Special-Purpose Entities

Dear Ms. Bielstein:

Wachovia Corporation ("Wachovia") is pleased to comment on the Proposed Interpretation, Consolidation of Certain Special-Purpose Entities ("Proposed Interpretation"), issued June 28, 2002. We support the issuance of the Proposed Interpretation as a means of codifying the consolidation guidance for special-purpose entities ("SPEs") and improving the overall usefulness and transparency of financial statements of entities involved with SPEs, but we believe that the Financial Accounting Standards Board ("FASB") should address several issues prior to the issuance of a final interpretation.

Wachovia is the nation's fifth largest banking company based on market capitalization and is a leading provider of financial services throughout the United States. Wachovia engages in a variety of off-balance sheet financial transactions that: (i) facilitate our customers' funding needs; (ii) diversify funding sources; (iii) reduce credit, market and/or liquidity risk; and (iv) optimize capital. These transactions, which include the use of multi-seller commercial paper conduits ("conduits" or "multi-seller conduits"), asset securitization vehicles and leasing structures, are summarized below.

1) Wachovia administers several off-balance sheet conduits. These conduits purchase a variety of investment grade-equivalent asset-backed loans and receivables, trade receivables and securities from borrowers and issuers, and issue commercial paper to fund those assets. For most of the commercial paper issued by the conduits that Wachovia administers, Wachovia provides liquidity backup facilities, which are senior to the overcollateralization provided by the sellers of the assets.

- Wachovia securitizes assets (both assets originated and purchased in the open market) through SPEs that issue debt and/or residual interests. These securitizations legally isolate the cash flows from the assets. In certain cases, Wachovia may retain some risk in the form of a residual interest or subordinated debt. These retained interests are recorded on-balance sheet as either trading securities or securities available for sale.
- 3) Wachovia enters into leveraged lease transactions for both equipment and real property to facilitate customer financing requirements. The assets are held in an SPE to which Wachovia provides some or all of the equity investment. The SPE then issues non-recourse debt to unrelated third parties. Wachovia's equity investment in leveraged leases is recorded on-balance sheet, net of the non-recourse debt.

As an active participant in SPE transactions, including both corporate and customer transactions, we recognize the need for a comprehensive consolidation standard based on the conceptual framework that will yield financial statements that are transparent. Currently, there is not a single comprehensive source of guidance on accounting for SPEs. Instead, we and other companies have referenced fragmented accounting guidance that was primarily intended for leasing transactions. This has resulted in varied interpretations and inconsistent application. We urge the FASB to act expediently to resolve the issues in the Proposed Interpretation and to issue a final interpretation.

You will find two attachments to this letter: *Appendix A*, which focuses on areas of the Proposed Interpretation we believe warrant further clarification or consideration, and *Appendix B*, which provides our views on several inconsistencies between the Proposed Interpretation and the conceptual framework, along with an alternative model of accounting for interests in SPEs.

We believe our comments in *Appendix A* will help ensure that the consolidation model in the Proposed Interpretation achieves the FASB's desired outcome of improved financial reporting by companies involved with SPEs. Our comments address:

- Silo analysis to multi-seller conduits;
- Criteria for classification as a Financial SPE ("FSPE") under paragraph 22;
- "Significant financial support" tests;
- Market-based fees:
- Sufficiency of equity;
- Disclosure; and
- Transition and application.

Appendix B addresses our concern that the accounting model in the Proposed Interpretation may be misleading, as a company may be required to record on the balance sheet assets that they do not own or control and record liabilities that are not obligations of the company. We believe the most transparent and useful accounting result is one based on the conceptual framework and that requires each party to properly account for its respective rights and obligations related to its investment in an SPE. Further, we believe additional substantive disclosures should be required to provide a complete description of the risks of a company's investment in an SPE. Simply changing the accounting rules will not necessarily be enough to prohibit the types of activities that have caused the problems in off-balance sheet transactions.

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Finally, we believe that certain detailed questions should be addressed during the FASB's redeliberations of the Proposed Interpretation to avoid numerous interpretive inquiries after a final interpretation is issued. As we have focused most of our efforts to date on the consolidation model in the Proposed Interpretation and not necessarily on the accounting mechanics, we are not offering detailed comments on these. Our hopes are that such questions will be addressed during the FASB's redeliberations process. Two questions that we would like to raise for your consideration as you prepare for redeliberations are: (i) the proper accounting result on a Primary Beneficiary's ("PB") financial statements for derivatives held by SPEs that would have qualified for hedge accounting (potentially the "short cut" method in paragraph 68) under Statement of Financial Accounting Standards ("SFAS") No. 133, Accounting for Derivative Instruments and Hedging Activities ("SFAS 133"), but presumably do not, as no documentation, designation or effectiveness testing would have been done at the SPE level; and (ii) the mechanics of deconsolidation, as it will be a significant issue for certain constituents if the Proposed Interpretation is issued in its current form.

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@wachovia.com.

Sincerely,

B. Lynn Rogers Senior Vice President Director of Accounting Policy

cc: David M. Julian, Senior Vice President and Corporate Controller, Wachovia Corporation Robert P. Kelly, Senior Executive Vice President and Chief Financial Officer, Wachovia Corporation

Appendix A Comments on the Proposed Interpretation

Silo Analysis for Multi-Seller Conduits

A multi-seller conduit has essentially the same economics as a series of single-seller SPEs, with the exception of certain efficiencies created by shared overhead and economies of scale. By including the "silo approach" in paragraph 17, we believe the Proposed Interpretation recognizes these circumstances. We support the approach that each silo be assessed independently by the transferor to that silo since this approach recognizes that the risks and rewards of each silo are specific to each transferor. The Proposed Interpretation is unclear whether other parties to a conduit transaction should also consider the silo approach.

We believe the Proposed Interpretation should be clarified to explicitly state that all parties involved with the multi-seller conduit, including administrators, liquidity providers and others who provide credit enhancement, should apply the silo approach. Just as a transferor's relationship with a multi-seller conduit is largely limited to the assets it transferred to the individual silo, so is an administrator's relationship with a multi-seller conduit. Therefore, the appropriate basis for an administrator's consolidation analysis of a multi-seller conduit should be the individual transaction silo. From the conduit administrator's perspective, if its rights and obligations are deemed to not be specific to individual silos, we believe a reasonable analysis could be made for purposes of determining who bears the exposure to expected losses in a structure. For example, we believe that a comparison of the program-wide liquidity provided by an administrator to an entire conduit to the aggregate of all other subordinated interests (i.e., overcollateralization provided by each seller to each silo) is a reasonable and supportable approach.

Silo Analysis for FSPEs. We believe the Proposed Interpretation is unclear as to how FSPEs and the tests for "significant financial support" are impacted by the silo approach. For example, from the perspective of the conduit administrator and/or the liquidity provider, it is unclear whether the entire conduit should be reviewed to determine if it qualifies as an FSPE or whether the conduit should be broken down into its various silos and then each silo be reviewed to determine whether it qualifies as an FSPE. We believe the "silo approach" should be applied to the transaction regardless of whether an SPE is reviewed under the variable interests model in paragraphs 13 – 18 or under the FSPE model in paragraphs 22 and 23. The expansion of the "silo approach" to both models would ensure that the parties involved with a multi-seller conduit only recognize the rights and obligations related to assets and liabilities of a specific silo and not inappropriately to the conduit as a whole.

Application of the Silo Approach. The Proposed Interpretation is also unclear regarding what interests should be considered when applying the "silo approach." For example, multi-seller conduit transactions are structured, from the seller's perspective, in one of two ways: a financing or a sale. Consider the following:

- Seller X transfers an interest in \$1,000 of receivables to an SPE. The SPE issues \$1,000 of beneficial interests to a multi-seller conduit that in turn issues \$900 of commercial paper.
 Seller X accounts for this transaction as a financing. The difference between the value of the assets transferred and the commercial paper issued provides first loss credit enhancement in the form of overcollateralization.
- 2) Seller Y transfers an interest in \$1,000 of receivables to a Qualifying Special Purpose Entity ("QSPE"). The QSPE issues \$900 of senior beneficial interests to a multi-seller conduit and \$100 of subordinated interests to Seller Y. The multi-seller conduit issues

\$900 of commercial paper. Seller Y treats this transaction as a sale under SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("SFAS 140"). The subordinated interests provide first loss credit enhancement to the senior beneficial interests.

To achieve consistency between the conceptual framework and the Proposed Interpretation, we note that Statement of Financial Accounting Concepts ("CON") No. 2, Qualitative Characteristics of Accounting Information ("CON 2"), acknowledges "greater comparability of accounting information ... is not to be attained by making unlike things look alike any more than by making like things look different." From the conduit administrator's and/or the liquidity provider's perspective, the risk profile in both of the transactions above is exactly the same and therefore, should result in similar accounting for the administrator or the liquidity provider. In determining who the PB is in cases where assets are transferred to a conduit through a OSPE, it is unclear whether the conduit administrator and/or the liquidity provider is able to consider the credit enhancement held outside of the silo as a variable interest. If the transfer through a QSPE prohibits the conduit administrator and/or the liquidity provider from being able to consider the seller's credit enhancement (overcollateralization), the conduit administrator and/or the liquidity provider would be deemed to hold the most subordinated variable interest, even though the liquidity provided to the multi-seller conduit is not the first loss in the structure. In both transactions, the overcollateralization provided by the seller is the most subordinate variable interest and should be the only variable interest evaluated for consolidation purposes, provided that the expected losses in the structure do not exceed the overcollateralization amount. We believe this point should be clarified in the Proposed Interpretation, so as not to create a situation where similar transactions are accounted for differently by conduit administrators and/or liquidity providers. We recognize that, due to the exception from consolidation provided by SFAS 140 for transferors to QSPEs, sellers will have different accounting results.

Silo Recommendations. In summary, we believe the following changes should be incorporated into the Proposed Interpretation to clarify the silo approach. It should:

- 1) Apply to all parties involved with a multi-seller conduit;
- Apply whether an SPE is reviewed under the variable interests model or the FSPE model;
- Consider all interests arising from all transactions from the transferor to the conduit regardless of whether the transfer involves an SPE or a QSPE.

Criteria for Classification as an FSPE

We support the exception created for FSPEs in paragraphs 22 and 23 of the Proposed Interpretation. We believe this exception was intended to recognize that certain SPEs are structured to effectively disperse risks across the parties involved with the transaction. However, in practice we believe many SPEs, which appropriately disperse risks across beneficial interests issued, will not qualify as FSPEs, since the proposed definition of an FSPE is largely dependent on the definition of a QSPE in SFAS 140.

A QSPE is restricted from holding any derivative financial instruments ("derivatives") other than passive derivatives that pertain to beneficial interests issued or to the transferred assets. Some SPEs that disperse risks across beneficial interest holders through the use of derivatives will not qualify as FSPEs, since the derivatives may not be "pertaining." We do not believe the intent of the Proposed Interpretation is to determine whether a structure is analyzed under the variable interest model or the FSPE model simply because of the existence of non-passive or non-pertaining derivatives. Further, derivatives in structures serve to diversify, rather than recombine

risks, which we believe is consistent with the FASB's intent for the FSPE model. Therefore, we propose that paragraph 22 be amended to include a subparagraph (4) stating:

"They may hold derivative financial instruments without regard to the limitations in paragraph 35(c)(2) of Statement 140."

The addition of this criterion in paragraph 22 serves only to properly define the population of risk-dispersing SPEs and is not an attempt to exclude from consolidation any population of SPEs, since all parties to an FSPE transaction will still need to consider the criteria in paragraph 23 to determine whether a PB exists. Further, we recognize the concerns that have been raised with respect to using SPE structures to disguise certain derivatives, but we believe these issues are fully addressed in the proposed amendment to paragraph 59(f) of SFAS 133.

"Significant Financial Support" Tests

We suggest that several clarifications be added to paragraphs 22 and 23 of the Proposed Interpretation to ensure that the exemption provision for SPEs structured to effectively disperse risks is clearly understood. These clarifications should be consistent with the fundamental goal of the Proposed Interpretation, which is to identify a party who controls the SPE through significant financial support. We do not believe applying the criteria, as currently drafted in paragraph 23, results in proper identification of a party who controls an SPE. We believe greater consistency in the application of the Proposed Interpretation can be achieved by having the FSPE model stand on its own as an entirely separate model from the variable interests model, while still retaining the concepts in paragraph 13.

Paragraph 23(a). One of the three criteria to assess "significant financial support" is that the enterprise has the ability to purchase and sell assets. It is unclear why the mere ability to buy and sell assets equates to control via significant financial support. The Basis for Conclusions in the Proposed Interpretation provides that the concept of significant financial support is based on exposure to risks. The documents that establish SPEs often include specific provisions in which assets can be purchased and sold, and which may or may not result in direct exposure to risk by the party making that decision. When an asset is sold under these conditions, it is unclear whether this is the type of "authority" or "significant discretion" that the FASB contemplated. We believe paragraph 23(a), in order to properly reflect potential control by an enterprise, should indicate that when an enterprise exercises authority to purchase and sell assets that does not significantly benefit that enterprise, that power should not be indicative of "significant financial support". Our suggested revisions to paragraph 23(a) are underlined as follows:

"It has <u>sufficient</u> authority to purchase and sell assets for the SPE and has sufficient discretion in exercising that authority to significantly affect the net income of the SPE that results in a significant direct benefit to the enterprise from exercising that authority. An enterprise does not have sufficient authority to buy and sell assets if the governing documents limit the amount, type and timing of purchases and sales and the enterprise cannot unilaterally change these documents."

Paragraph 23(b). We believe paragraph 23(b) is meant to parallel certain variable interest concepts from paragraph 18. Fundamental to the concept of a variable interest is the concept in paragraph 13 that the variable interest must be the majority of, or significantly more than other, variable interests. This concept should also be clearly incorporated in the FSPE model. If the FSPE model is not applied consistently within the parameters of the variable interest model, the following occurs: in a typical collateralized debt obligation ("CDO") transaction, if we assume that the CDO is an FSPE, the collateral manager retains a portion of the residual equity in the transaction. When evaluating the three criteria in paragraph 23, the collateral manager is likely to be the only candidate to fail two of the three criteria. If a collateral manager exercises authority to

purchase and sell assets under the investment guidelines of the structure, holds only one percent of the residual equity and receives market-based fees (discussed in *Market-Based Fees* section), the model in paragraph 23, as currently drafted, requires it to consolidate. We believe this result is inconsistent with the intent of the variable interests model, since the collateral manager does not hold a majority of the variable interest, or does not hold a significant amount of variable interest that is significantly more than anyone else.

We believe the FASB intended paragraph 23(b) to align with the variable interest concepts in paragraphs 13 and 18. Specifically, we believe the types of "asset support" in paragraph 23(b) were intended to be the same as the types of variable interests in paragraph 18 and the "asset support" should be a majority of, or a significant amount of variable interests that are significantly more than all potential variable interests contemplated by paragraph 18. To that end, our suggested revisions to paragraph 23(b) are underlined as follows:

"It provides a guarantee, back-up lending arrangement, or other form of liquidity, credit, or asset support that is (i) subordinate to all other potential variable interests, as identified in paragraph 18, and (ii) is either the majority of all other potential variable interests or is significantly more than other potential variable interests."

We believe this suggested language accomplishes an important goal of incorporating into a single model the evaluation of the PB of an FSPE. The result of these suggested changes, along with those that we suggested in paragraph 23(a), will be a consolidation model that yields results based on a party who truly is in control of the economics of a structure, rather than on requiring consolidation by a party who holds, for example, only one percent of the potential variable interests in a structure.

Paragraph 23(c). We do not believe that the receipt of non-market-based fees (discussed in Market-Based Fees section) equates to control, as contemplated by paragraph 23(c).

Market-Based Fees

Paragraphs 19 and 23(c) of the Proposed Interpretation state that all fees earned from an SPE are presumed to not be market-based because it can be difficult to determine what market is. We disagree with this presumption.

We believe a better approach is to presume that the fees are market-based. The volume of transactions in both the CDO and multi-seller conduit markets provide a deep, objective basis on which fees can be compared. We acknowledge that every transaction that takes place is unique and has special complexities, and therefore, the fee earned may not be comparable to the fee in another somewhat similar transaction. However, various methods exist to assess whether fees are market-based: for example, how the fee was negotiated or what a fair return should be based on the specifics of the transaction. We believe a presumption that fees are not market-based is inappropriate as SPE transactions often involve significant negotiations between independent enterprises which result in the acceptance of the overall transaction by all parties.

The Proposed Interpretation implies that if the party earning the fee also holds an "investment at risk" in the SPE, the fees cannot be considered market. We believe that clarification of an "investment at risk" is warranted since it is unclear what these investments are. We believe if the fee can be validated to another similar transaction in the market where the party earning the fee does not own an "investment at risk," then the fee should not be presumed to be anything other than market-based.

Sufficiency of Equity

It is unclear from reading paragraphs 9(b), 11 and 12 of the Proposed Interpretation whether sufficient equity should be based on expected losses, comparison to a similar substantive operating entity ("SOE") or a minimum threshold for SPEs that can be evaluated based on voting interests.

Paragraph 9(b) of the Proposed Interpretation introduces the notion that the equity investment, when determining consolidation based on voting interests, should be greater than or equal to the expected future losses of the SPE at all times during the SPE's existence. We believe this test represents a reasonable basis for determining the sufficiency of the equity in a structure versus a presumption of 10% or a comparison to an SOE. An equity investor, by definition, bears the risks and rewards of ownership and having sufficient equity to cover expected losses should be deemed to be sufficient equity in a structure.

Paragraph 11 states that the enterprise should look to the equity investment of an SOE with similar assets and liabilities, similar activities and similar risks to determine the sufficiency of the equity. We believe application of paragraph 11 will be difficult without some clarification as to what is considered "similar." There are not many SOEs that are readily comparable to SPEs because, by their nature, SPEs are not SOEs. Furthermore, the equity profile can vary significantly from one SOE to another because of historical accounting differences that may have arisen under GAAP, different management strategies for funding, operating and business risks unique to a single entity and other such factors. If this concept is retained, we suggest that the FASB provide detailed comparative examples.

Paragraph 12 indicates that unless the equity investment is at least equal to 10% of the SPE's total assets then it is presumed to be insufficient. We are unclear as to whether the 10% guidance is the minimum or whether it is what is required in the absence of any other supportable evidence. In addition, this presumption seems arbitrary, as it is not uncommon for SOEs to have less than 10% equity. Most SPE structures in the market have less than 10% equity and have received external ratings that would seem to indicate that the rating agencies and the investors believe that the SPE is sufficiently capitalized. Again, if this presumption remains, we suggest that the FASB provide examples illustrating how the presumption can be overcome.

We believe that the FASB should clarify how the expected loss test in paragraph 9(b) interacts with the comparison to a similar SOE test in paragraph 11 and the 10% presumption in paragraph 12. As an alternative, we support the deletion of paragraphs 11 and 12, as currently written, and suggest that the approach in paragraph 9(b) be used as the basis for determining sufficient equity.

Disclosure

We strongly support the FASB's goal of increased transparency in financial reporting via more robust disclosures. Accordingly, we believe additional disclosures should be required in transactions with SPEs. Such disclosures may include:

- Reporting enterprise's relationship with the SPE (qualitative and/or quantitative);
- General nature and purpose of the SPE;
- Collateral in the SPE:
- Nature and purpose of derivatives to which the SPE is a party;
- Liquidity or credit enhancement provided by other parties to the SPE; and
- Credit ratings of any outstanding securities of the SPE.

These additional disclosures will assist investors in determining what relationships the enterprise has with SPEs and will enable investors to assess the risks associated with SPEs.

Transition and Application

We support immediate application of the Proposed Interpretation for all newly created SPEs upon issuance of the final interpretation, although we suggest the FASB keep constituents adequately informed of its intended timing for the issuance of a final interpretation. We recognize the importance of this project and we support its timely resolution, but we believe the proposed transition timing for existing structures is overly burdensome.

Many companies are currently facing a significant amount of uncertainty in determining how the Proposed Interpretation will impact their respective businesses, since it is unclear how many significant provisions of the Proposed Interpretation will be interpreted and applied. As a result, it has been difficult to move forward with any proposed restructurings due to a lack of confidence as to what the accounting outcome will be.

Additionally, many administrative and practical implementation issues exist that will require time to address and resolve, such as:

- Determining/establishing the legal rights for investors to obtain required accounting information;
- Gathering all relevant information on structures and variable interest holders to initially
 apply the final interpretation;
- Developing a system for ongoing monitoring of changes to the holders of variable interests;
- Undertaking due diligence on the assets and liabilities of the SPE (as most would not have previously been subject to audits);
- Developing a model that is acceptable to all parties that will calculate the expected losses in a structure as a basis for evaluating the variable interests;
- Developing an appropriate model to establish fair value for outstanding liabilities for an SPE upon initial adoption and in future periods when the PB may change; and
- Amending legal documents, and in some circumstances, redeeming and reissuing securities.

In light of the above and in an effort to achieve financial statements that are relevant and reliable, if the final interpretation is released in late 2002, we support an effective date of the first reporting period after September 15, 2003, for existing structures. This will allow sufficient time for transferors, sponsors, investors and other parties to an existing transaction to adequately study the new rules, evaluate alternative structures and determine the extent of ongoing administrative processes (i.e., record keeping of variable interest holders).

Regardless of the transition date that the FASB believes is appropriate for the final interpretation, we believe that the FASB should consider the pending implementations and transitions faced by companies for the amendment to SFAS 133 and the proposed interpretation of SFAS No. 5, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others ("Guarantor Proposed Interpretation"). These two projects may closely interact with the Proposed Interpretation for certain companies. In order to avoid less understandable financial statements in the case where all three new standards affect an enterprise, the FASB should consider the same effective date for certain provisions of all three.

Appendix B Comments on the Conceptual Framework

The Summary of the Proposed Interpretation documents how the conclusions reached relate to the conceptual framework. There are several assertions in the Proposed Interpretation we do not believe are consistent with the conceptual framework.

Generally, we do not believe requiring a PB to consolidate an SPE in which the PB owns less than a majority of the variable interests improves financial reporting because, as described below, we do not believe the PB can benefit exclusively from, nor control, the assets, nor is it obligated under the liabilities

CON 6, Elements of Financial Statements, defines assets as "probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events." More specifically, paragraph 26 identifies the following three essential characteristics of an asset:

- An asset embodies a probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash inflows;
- 2) A particular entity can obtain the benefit and control others' access to it; and
- The transaction or other event giving rise to the entity's right to or control of the benefit has already occurred.

When these three criteria are applied in the context of the assets of an SPE relative to a PB, the assets of the SPE generally could not be assets of the PB. The Summary of the Proposed Interpretation acknowledges the PB may not have the direct ability to make decisions about the uses of the assets. Consolidation of these assets may not provide more useful information or may not provide a clearer picture of the true financial statement position to the users of the financial statements.

Further to this point is the definition of liabilities: "probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events." Most liabilities require the obligated entity to transfer cash or other assets to one or more other entities. In some of the structures that will be impacted by the Proposed Interpretation, some potential PBs would be required to recognize 100% of the liabilities of the SPE when the PBs have only a limited obligation to settle the liabilities, since the liabilities are typically fully backed by assets, derivatives and credit support in an SPE. Consider, for example, a typical CDO structure with an equity holder having a three percent ownership interest or a conduit structure where the administrator provides only a small amount of credit support. If the equity holder or administrator in either of these circumstances were required to consolidate, the extent of their liabilities would be greatly overstated.

Reference is made to CON 1, Objectives of Financial Reporting by Business Enterprises, in the Summary of the Proposed Interpretation. This reference states: "including SPEs in consolidated financial statements with the PB will help achieve that objective" (providing useful information) "by providing information that helps in assessing the amounts, timing and uncertainty of prospective net cash flows to the consolidated entity." The focus in this statement should be on the net cash flows. We believe the results of applying the Proposed Interpretation may cause misleading financial reporting. The PB's investment in the SOE will be eliminated and 100% of the assets and the remaining liabilities of the SPE will be consolidated by the PB at fair value. The resulting financial statements will not properly reflect what the true gains and losses are on

the PB's individual investment. Also, because of the requirement for continual evaluation of the PB of an SPE, the assets and liabilities have the potential to move from one PB to another, which may become difficult for readers of financial statements to understand.

Reference is also made in the Summary of the Proposed Interpretation to CON 2, stating that completeness is an essential element of representational faithfulness and relevance. It is unclear how the PB representing that it owns assets to which it is not entitled and liabilities under which it is not obligated, and not presenting its net investment in an SPE, purports to achieve this notion of representational faithfulness.

The FASB's basis in paragraph B15 of the Proposed Interpretation for requiring the PB to consolidate an SPE reads, in part, "the providers of financial support are in the same position as parents in a conventional parent-subsidiary relationship." We believe consolidation of an entire structure because an enterprise is subject to risk of loss is inconsistent with consolidating an entity because control can be exercised.

We believe all of these identified conflicts between the Proposed Interpretation and the conceptual framework should be considered and reconciled before the final model for consolidation of SPEs is issued.

If a party owns a majority of the variable interests, the presumption is that this party consolidates. If no party holds a majority of the variable interests and control is not otherwise exerted, we suggest an accounting model based on an enterprise accounting for its ownership under the fair value requirements of SFAS 115, Accounting for Certain Investments in Debt and Equity Securities, and the impairment guidance in EITF Issue No. 99-20, Recognition of Interest Income and Impairment on Purchased and Retained Beneficial Interests in Securitized Financial Assets. We believe this accounting provides a fair representation of the enterprise's value in the transaction and leads to more useful financial statements. Further, the Guarantor Proposed Interpretation of SFAS 5 on guarantees will provide for the recognition of the values of certain guarantees. Consideration should be given to providing more guidance on substantive disclosures of how fair values were determined, as well as on requiring other substantive disclosures that would accurately depict an enterprise's involvement with an SPE. The disclosures we suggest are similar to those outlined in section Disclosure to this letter.