

**Len Tatore**

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**Letter of Comment No:** 5  
**File Reference:** 1200-001  
**Date Received:** 07/30/03

**From:** John.McEnerney@banking.state.ny.us  
**Sent:** Wednesday, July 30, 2003 9:30 AM  
**To:** Director - FASB  
**Subject:** File Reference 1200-001

The New York State Banking Department (the Department) appreciates the opportunity to respond to the Financial Accounting Standards Board's (the Board's) exposure draft, Qualifying Special-Purpose Entities and Isolation of Transferred Assets. While the Department applauds the Board's efforts to better reflect economic realities, this exposure draft appears mostly designed to close loopholes highlighted by Interpretation 46. Such an exercise seems at odds with the "principles-based" approach that the Board has proposed and the Department supports. Further, the number of recent revisions on this issue -- Statement 125, issued in 1996, was replaced by Statement 140, clarified by Technical Bulletin 01-1, and affected by Interpretation 46 -- raises questions about whether the concepts on which these pronouncements are based have inherent flaws that call for reconsideration of the Board's entire approach.

The overriding principle that should guide the accounting is to require consolidation of all entities by the party in ultimate control, and to remove corresponding assets from the balance sheet only when such control no longer exists. These principles should be communicated in a new comprehensive statement. This necessitates avoiding "safe harbors" such as QSPEs and looking through entities such as "orphaned" SPEs to determine who, if anyone, actually has control. A new comprehensive statement would also solve the problem noted in paragraph A13 where there are differences in applying Statement 140 and Interpretation 46 to the same SPE.

The Department acknowledges that making such a new comprehensive standard operational will be a challenging process. However, the expected challenges should not deter the Board. The Board should also consider how its approach will compare against the current and future standards of the International Accounting Standards Board, which have been and are likely to be focused on the principle of control. Lastly, the Board should consider whether its approach diverges from the Securities and Exchange Commission's recently issued study on principles-based accounting in conjunction with the Sarbanes-Oxley Act.

If you have any questions or if you would like to discuss our comments, please call me at (212) 709-1532.

Very truly yours,

John McEnerney  
Chief of Regulatory Accounting