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December 28, 1995

Mr. Dennis R. Beresford, Chair Financial Accounting Standards Board 401 Merrit 7 P.O. Box 5116 Norwalk, CT 06856-5116 Letter of Comment No: 44 File Reference: 1082-154 Date Received: //4/9/

Dear Mr. Beresford:

We are writing to express our views and concerns related to the Exposure Draft of Proposed Statement of Financial Accounting Standards "Consolidated Financial Statements: Policy and Procedures". The proposed statement sets forth standards for when entities should be consolidated and how consolidated financial statements should be prepared. Our views and concerns with the proposed draft arose primarily after reviewing the illustration contained in Appendix B, Example 5 (special purpose leasing entities). The proposed statement also includes a requirement for restatement of financial statements upon adoption (except the provisions of paragraphs 19-21 and 26-33). We are opposed to the rules of the proposed statement relating to special purpose leasing entities and, in particular, are opposed to the rules requiring restatement or retroactive treatment.

Like many companies, Home Depot finances part of its real estate and fixed asset portfolio with off-balance sheet operating leases. Recently, Home Depot completed a financing transaction similar to the structure outlined in Example 5 (a "senior operating lease"). With the senior operating lease, an owner-trustee (or special purpose leasing entity) was *established by a bank* to own the real estate and lease it to the company. Before we finalized the senior operating lease financing arrangement, Home Depot carefully reviewed the accounting, tax and legal issues, and spent considerable dollars ensuring that the structure complied with all of the rules.

In our opinion, a retroactive accounting standard is unreasonable, unfair and un-American. For Home Depot, it would mean a waste of the money spent ensuring that the structure complied with accounting, tax and legal issues. For other companies, it may have more severe consequences. Many companies have debt agreements that place restrictions on how much debt they may carry. While the



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definition of debt typically *includes* capital lease arrangements, the definition of debt typically *excludes* operating leases. The adoption of this Statement as drafted would have detrimental effect upon those companies and would require renegotiation of many debt agreements.

When the U.S. or any state government changes existing legislation, judicial procedure usually results in such enactment being adopted prospectively. The concept of "grandfathering" is omnipresent in Internal Revenue Code amendments. Grandfathering recognizes that reversing law retroactively is unreasonable. Frankly, penalizing individuals and companies for structuring transactions "within the rules" is more than unreasonable, it is simply punitive!

Finally, since the Financial Accounting Standards Board has not in the past required companies to immediately recognize a new accounting standard, we fail to understand the retroactive nature of the proposed statement.

We appreciate the opportunity to express our views and would be pleased to discuss these with you at your convenience.

very firuly yours,

Marshall L. Day

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American Institute of Certified Public Accountants Accounting Standards Executive Committee