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LETTER OF COMMENT NO.

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Mr. Russell G. Golden Director of Technical Application and Implementation Activities Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116 30 October 2008

Proposed Statement of Financial Accounting Standards, Amendments to FASB Interpretation No. 46(R) (File Reference No. 1620-100)

Dear Mr. Golden:

We appreciate the opportunity to comment on the aforementioned Proposed Statement of Financial Accounting Standards, Amendments to FASB Interpretation No. 46(R) ("Proposed Amendment"). We support the Board's interim steps to amend certain key provisions of FASB Interpretation No. 46(R), Consolidation of Variable Interest Entities ("Interpretation 46(R)"). We support the Board's proposal to move toward a more principles-based approach, which we believe will reduce some of its complexity. However, in reviewing the Proposed Amendment, we have the following comments for the Board's consideration.

- We have significant concerns with the apparent inconsistency in how substantive kick-out rights are considered in paragraph 14 of the Proposed Amendment as compared with other authoritative literature, such as Emerging Issues Task Force ("EITF") Issue No. 04-5, "Investor's Accounting for an Investment in a Limited Partnership When the Investor is the Sole Partner and the Limited Partners Have Certain Rights" ("EITF 04-5"). We believe that the concept of substantive kick-out rights should be the same under either a voting or variable interest model and should remain consistent with the guidance in EITF 04-5. If the Board wishes to modify how such rights are considered in the determination of control or power, we believe the Board should undertake a separate project and address how kick-out rights affect control or power for all types of entities (and not just variable interest entities ("VIE")).
- We encourage the Board to more fully develop the concept of the "power to direct matters that most significantly impact the entity" to address how formation activities to restrict substantive decision making should be considered in applying this criteria.
- Retaining the quantitative analysis implies that the Board believes that there are
 circumstances in which an entity would be unable to determine whether or not it is the
 primary beneficiary of a VIE based on the qualitative analysis. Without clarification as to the
 circumstances in which it is relevant, retaining the quantitative analysis will be a potential
 source of confusion when applying the principles of paragraph 14 of the Proposed
 Amendment.



The Proposed Amendment's disclosure requirements will significantly increase the
information most entities will be required to accumulate and disclose regarding VIEs. We
encourage the Board to carefully consider the comments received from preparers regarding
the time and effort needed to compile the proposed enhanced disclosures, and whether the
disclosures relating to subsidiaries should differ between voting interest entities and VIEs.

We elaborate on these observations below.

While we support the Board's interim steps to address immediate concerns about the consolidation model through the Proposed Amendment, we strongly encourage the Board to consider developing a singular principles-based consolidation model emphasizing control. We believe that retaining the quantitative analysis beyond the interim amendments to Interpretation FIN 46 (R) is inconsistent with any effort to establish a comprehensive, principles-based approach to determining which entities should be consolidated for financial reporting purposes. Moreover, we understand that the International Accounting Standards Board ("IASB") currently is evaluating its consolidation standards and contemplating its own amendments. While the Boards have not initiated a joint project on consolidation, we believe that such a project should be a critical element of the Boards' joint agenda. Convergence with respect to consolidation is fundamental to the long-term stated objectives of both Boards to converge their respective financial reporting standards.

Substantive kick-out rights

We are concerned by the apparent inconsistency in how substantive kick-out rights are considered in paragraph 14 of the Proposed Amendment as compared with other authoritative literature, such as EITF 04-5, EITF Issue No. 96-16," Investor's Accounting for an Investee When the Investor Has a Majority Interest but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights," ("EITF 96-16"), and AICPA Statement of Position 78-9, Accounting for Investments in Real Estate Ventures. We understand that the Board was "willing to accept an inconsistency in the kick-out right concept between the primary beneficiary analysis in this proposed Statement and other authoritative literature..." to avoid creating structuring opportunities whereby an enterprise may conclude that no one consolidates an entity. However, creating inconsistency in the consideration of kick-out rights will significantly increase the circumstances in which the conclusion on consolidation will differ solely because of the determination of whether an entity is a voting interest entity or a VIE.

In developing the EITF 04-5 model, the EITF carefully deliberated over the course of five meetings the effect of kick-out rights on control. The EITF concluded that the party that makes the day-to-day operating decisions for an entity does not control that entity if a majority of shareholders have the ability to remove that party and certain other conditions are met. Essentially, the EITF concluded that that party is a hired manager and does not control the entity. While some may believe that the EITF's conclusion in EITF 04-5 is inconsistent with the concept of "current control" favored by the FASB in the Proposed Amendment, it is consistent with the concept of participating rights in EITF 96-16. That is, a manager may be able to exercise "current control" absent a decision of other shareholders to remove the manager or to exercise participating rights. However, in each circumstance, actions by other parties can prevent the manager from exercising control. Consistent



with the conclusions in EITF 04-5, we believe that if a manager can be prevented from exercising control, that manager does not control the entity and should not consolidate the entity.

It appears that the Board agrees with the conclusion described above, to an extent. The Proposed Amendment would provide that if a single party can unilaterally remove the manager, the manager does not control the entity. Essentially, the Board has concluded that only kick-out rights that can unilaterally be exercised are substantive. However, we believe this conclusion lacks conceptual merit. We believe that the guidance in EITF 04-5 regarding the determination of the substance of kick-out rights has worked well and should not be changed without careful reconsideration and due process, and any such change should apply to all entities, not just to VIEs. We believe the inconsistency that would result from the Proposed Amendment is not justifiable on a conceptual level and inappropriately introduces the opportunity for accounting arbitrage between the two models.

The implications of the proposed change will be dramatic. For example, consider a traditional limited partnership in which the limited partners have substantive kick-out rights but none of the limited partners have the unilateral ability to remove the general partner. If the entity is a voting interest entity, the general partner generally would not consolidate the limited partnership pursuant to EITF 04-5. However, if the limited partnership is a VIE, the general partner likely would be the primary beneficiary pursuant to paragraph 14A of the Proposed Amendment. As a result, the determination of whether an entity is a VIE takes on greater importance. As a result of the Proposed Amendment, we anticipate that general partners and managing members of most investment partnerships and LLCs that are VIEs will be required to consolidate their funds. With the ongoing assessment amendment, VIEs could result from changes in economics alone. We fail to see how the general partner has any more or less control over a partnership because of its accounting classification.

We believe that retaining multiple, inconsistent concepts of kick-out rights within the consolidation literature will contribute to complexity in applying the overall consolidation model, and we encourage the Board to consider resolving the conceptual inconsistency in favor of EITF 04-5. As stated earlier, if the Board wishes to modify the manner in which such rights are relevant in the determination of control or power, the Board should undertake a separate project and address the application of kick-out rights for all types of entities.

Ongoing assessment of VIE status and primary beneficiary

We support the Board's decision to require ongoing assessments to identify the primary beneficiary and the entity's status as a VIE or voting interest entity. We note that this continuous assessment is consistent with the requirements to evaluate control of an entity pursuant to Accounting Research Bulletin No. 51, Consolidated Financial Statements ("ARB 51"), and believe that requiring continual assessments is appropriate. However, as discussed above, we note that an entity could change from a voting interest entity to a VIE solely because of changes in economics. In certain circumstances, those economics could require a different interest holder to consolidate the entity.

For example, an entity that initially is assessed as a voting interest entity and is not consolidated by the general partner because of substantive kick-out rights that later becomes a VIE generally will be consolidated by the general partner unless a single limited partner could unilaterally remove the



general partner. We believe such an outcome is difficult to justify as described in our comments in the preceding section.

Another example could involve a situation in which losses cause a voting interest entity to become a VIE and the qualitative analysis is inconclusive. If a single entity that does not clearly have power or control has a majority of the expected benefits or losses of the VIE, that entity would consolidate. Our concerns about the quantitative assessment and when it should be used are discussed below.

Implementation guidance on qualitative primary beneficiary assessment

We understand that various constituents have understood the Proposed Amendment differently in terms of how to perform a qualitative assessment in determining the primary beneficiary of a VIE. Although the Board clearly expects that a quantitative analysis will seldom be necessary, we encourage the Board to more fully develop the concept of the "power to direct matters that most significantly impact the entity" to address how formation activities to restrict substantive decision making should be considered in applying this criteria.

Consider the scenario in Example 3 in the FSP FIN 46(R)-6, "Determining the Variability to Be Considered in Applying FASB Interpretation No. 46(R)." Once the trust is established and the credit-linked notes have been issued to the investors, there are no more decisions to be made within the trust. Under such a scenario, should one look to the current post-formation power in the trust or look to the power an enterprise may have had in the formation of the trust that essentially rendered it "on auto-pilot?" We note that paragraph B23 of the Proposed Amendment 46(R) states "that involvement [significant involvement with the creation of an entity] may indicate that the party had the opportunity to establish arrangements that result in that party being the variable interest holder with the power to direct matters that most significantly impact the activities of the variable interest entity,the entity's economic performance," but that concept is not described in the power criteria. Although the Board makes it clear that significant involvement by a party in the creation of the entity does not, in isolation, establish that party as the primary beneficiary, it is not clear how that exercise of power in the creation of an entity is considered in determining the primary beneficiary. Without further clarification on current power versus previous decision making power, the determination of whether an entity has "power" may be difficult in certain circumstances.

Retention of quantitative primary beneficiary assessment

As previously noted, the Board has retained the quantitative analysis for situations in which the qualitative analysis is not determinative as to whether or not an entity is the primary beneficiary of a VIE. Retaining the quantitative analysis implies that the Board believes that there are circumstances in which an entity would be unable to determine whether or not it is the primary beneficiary of a VIE based on the qualitative analysis. While we agree with the Board that a quantitative analysis will not be necessary to determine the primary beneficiary in most circumstances, if ever, it is not clear in which "uncommon" circumstances the Board believes that a quantitative analysis is required. We encourage the Board to provide examples or more clearly articulate the circumstances in which the quantitative analysis may be necessary.



Given that an element of the quantitative analysis may have already been prepared to determine whether an entity is a VIE pursuant to paragraph 5(a), we believe that retaining the quantitative analysis, without guidance as to the circumstances in which it is relevant, also may lead some to attempt to default to the quantitative analysis. In particular, we believe that there will be circumstances in which a quantitative assessment may result in a different conclusion than the qualitative assessment and the existence of both criteria will lead to confusion and, potentially, attempts to default to the analysis that provides a result that is deemed beneficial.

As discussed previously, we believe that the retention of the quantitative analysis should be only an interim step until the FASB considers the results of the IASB's consolidations project. If after implementation of the Proposed Amendment, the frequency of the use of the quantitative analysis is greater than anticipated, that circumstance will suggest that the qualitative criteria must be refined further. We believe that, ultimately, there should be only one consolidation model based on a qualitative assessment of power and benefits for all entities, whether the entity currently is considered a VIE or a voting interest entity.

Disclosures

While we understand the need to improve the transparency of an entity's involvement in a VIE, we observe that the Proposed Amendment's disclosure requirements will significantly increase the information most entities will be required to accumulate regarding VIEs. We expressed similar observations in our comment letter dated October 15, 2008 regarding proposed FSP FAS 140-e and FIN 46 (R) ~e, "Disclosures about Transfers of Financial Assets and Interests in Variable Interest Entities." We continue to encourage the Board to carefully consider the comments received from preparers regarding the time and effort needed to compile the proposed enhanced disclosures, particularly with respect to disclosures of the assets and liabilities of consolidated VIEs that are not required for consolidated voting interest entities. We believe that the practice of layering on incremental disclosures with each new standard highlights the need for a comprehensive disclosure framework, as recently recommended by the SEC Advisory Committee on Improvements to Financial Reporting.

We would be pleased to discuss our comments with the Board or its staff at your convenience.

Very truly yours,

