



LETTER OF COMMENT NO. 35

**Robert L. Morris**  
Executive Vice President  
and Chief Accounting Officer

November 14, 2008

Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

**Re: File Reference No. 1620-100**

Dear Director:

We are writing in response to your invitation to comment on the Exposure Draft entitled, *Amendments to FASB Interpretation No. 46(R)* ("Exposure Draft").

KeyCorp (Key), headquartered in Cleveland, Ohio, is a bank-based financial services company that, at September 30, 2008, had assets of approximately \$101 billion. Financial institutions like Key have been greatly impacted by the accounting guidance in FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities* ("FIN 46(R)") and have spent a significant amount of time interpreting and applying it to various entities. As such, Key remains very interested in new interpretations and guidance related to this pronouncement because of the potential impact to existing entities and future structures.

We appreciate the opportunity to comment on the Exposure Draft and support the Board's commitment to developing high-quality financial accounting standards and improving the comparability of financial information while promoting international convergence of accounting standards. Key takes pride in providing detailed, timely and comprehensive financial information to the investment community and supports standards and interpretations that clearly result in reliable and relevant information that can improve investor understanding and allow for more informed decisions.

It is Key's belief that the FASB's intent in developing and proposing this guidance is to improve financial reporting by entities involved with variable interest entities ("VIE") and to provide more relevant and reliable information to users of financial statements. However, it is Key's belief that this proposed accounting guidance as currently drafted will have an adverse impact on consolidation accounting, adding additional complexity and subjectivity to accounting for variable interest entities. It is Key's position that the following items need to be addressed in any final guidance related to consolidation of VIEs:

- Ongoing assessments to determine whether an entity is a VIE and whether an enterprise is the primary beneficiary of a VIE.
- When and how substantive kick-out rights can and cannot be used in determining an enterprise's power to direct matters.



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- Determination of a VIE's primary beneficiary by identifying the enterprise with the power to direct matters that most significantly impact the activities of the VIE, including but not limited to, activities that impact the entity's economic performance.

### **Ongoing assessments of VIEs and the primary beneficiary**

This proposal would require ongoing assessments to determine whether an entity is a VIE and whether an enterprise is the primary beneficiary of a VIE. Currently, under FIN 46(R), reconsideration of an entity's VIE status and primary beneficiary is required only when specific reconsideration events occur. From Key's perspective, this reconsideration event guidance has functioned appropriately in identifying situations when an entity needs to be assessed to determine if it is a VIE and when the primary beneficiary of a VIE has changed and a particular entity requires consolidation or deconsolidation.

It is Key's position that requiring ongoing assessments to determine whether an entity is a VIE and identifying the primary beneficiary of the VIE is not necessary and is extremely burdensome both operationally and from a cost viewpoint. Obtaining the necessary information to perform ongoing assessments in a timely manner could prove to be difficult and time-consuming for all variable interest holders of the VIE.

As noted previously, Key believes the current reconsideration event criteria in paragraph 7 are sufficient to identify and capture events which require reconsideration of an entity's status as a VIE. Paragraph 15 addresses reconsideration of a primary beneficiary upon certain events, however, paragraph 7 does not specifically mention reconsideration of the primary beneficiary based on the event criteria. As such, Key recommends amending paragraph 7 to include reconsideration of the primary beneficiary at the time of a reconsideration event if it is determined that the entity is a VIE.

A second although less preferable alternative would be to require annual assessments with interim assessments if specified triggering or reconsideration events occurred. This alternative would provide entities with a variable interest with more time to obtain the necessary information to perform the assessment of the VIE and primary beneficiary while still capturing any changes to the entity's status or primary beneficiary.

### **Use of substantive kick-out rights**

This proposal would prohibit the use of substantive kick-out rights when determining if an enterprise has the power to direct matters unless a single enterprise (including its related parties and de facto agents) has the unilateral ability to exercise such substantive kick-out rights. This proposed guidance is not consistent with Emerging Issues Task Force Issue No. 04-5, *Determining Whether the General Partner, or the General Partners in a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights* ("EITF 04-5"). EITF 04-5 states that if a manager can be prevented from exercising control because of the substantive kick-out rights held by the non-managers, then the manager does not control the entity and should not consolidate the entity. In addition, EITF 04-5 specifically defines the criteria for kick-out rights to be substantive.

It is Key's position that EITF 04-5 has worked well and the use of substantive kick-out rights should not be changed. Accounting guidance that provides for the use of substantive kick-out rights should be consistent in its application, and Key believes the relevant guidance in EITF 04-5 regarding these

substantive kick-out rights appropriately reflects the party with the power in these entities. By eliminating the use of substantive kick-out rights in FIN 46(R), there will be inconsistencies between accounting for VIEs and accounting for voting rights entities, and as such, Key encourages the FASB to retain a model consistent with EITF 04-5.

**Power to direct matters that most significantly impact the activities of a VIE**

This proposal introduces the concept of controlling financial interest into FIN 46(R). Specifically, paragraph 14 states “An enterprise shall consolidate a VIE during a reporting period (not limited to the end of a reporting period) if that enterprise has a variable interest (or combination of variable interests) that provides the enterprise with a controlling financial interest based on the provisions in paragraphs 14A-14C.... 14A... An enterprise shall be deemed to have a controlling financial interest in a variable interest entity if it has both of the following characteristics: a. The power to direct matters that most significantly impact the activities of a variable interest entity, including but not limited to, activities that impact the entity’s economic performance.... b. The right to receive benefits from the variable interest entity that could potentially be significant to the variable interest entity or the obligation to absorb losses of the entity that could potentially be significant to the variable interest entity....” It is Key’s position that the concepts of a controlling financial interest and the power to direct matters that most significantly impact the activities of a VIE are too subjective as currently written in this proposal.

The above-referenced requirements will cause entities to consolidate traditional securitizations which previously met the sale criteria under Statement of Financial Accounting Standards No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities – a replacement of FASB Statement No. 125* (“SFAS 140”), resulting in re-recognition of those assets on the balance sheet through consolidation under FIN 46(R). Key would like to see these concepts more fully developed as well as more consistent with the concept of control under SFAS 140 to prevent entities from being required to consolidate more traditional securitizations.

In addition to further developing the concepts of controlling financial interest and power to direct matters that most significantly impact the activities of the VIE, Key requests that the FASB expand on the examples provided in Appendix A of the Exposure Draft. As the examples are currently written, they are more simplistic than actual transactions that occur in the marketplace. Key believes that more realistic examples and underlying assumptions would be beneficial in illustrating the principles of the guidance and the many different VIE structures that exist.

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We hope these comments are useful and positively influence the final guidance. We welcome the opportunity to discuss these issues in more detail. Please feel free to contact Chuck Maimbourg, Director of Accounting Policy & Research, at 216-689-4082 or me at 216-689-7841.

Sincerely,



Robert L. Morris  
Executive Vice President &  
Chief Accounting Officer