



**Kimco
Realty
Corporation**

EXECUTIVE OFFICES



LETTER OF COMMENT NO. 56

November 14, 2008

Mr. Russell Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

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

Dear Mr. Golden:

Kimco Realty Corporation ("Kimco") appreciates the opportunity to provide comments and observations on the Financial Accounting Standards Board's (FASB or Board) on the proposal contained in the FASB Exposure Draft, *Amendments to FASB Interpretation No. 46(R)* ("the ED").

Kimco is one of the nation's largest owners and operators of neighborhood and community shopping centers. Kimco is a self-administered real estate investment trust ("REIT") and manages its properties through present management, which has owned and operated neighborhood and community shopping centers for over 50 years. The Company believes its portfolio of neighborhood and community shopping center properties is the largest (measured by GLA) currently held by any publicly-traded REIT.

Kimco frequently enters into joint venture investments for which a review of the provisions of FIN 46(R) is applied in order to determine if the entity is a Variable Interest Entity ("VIE") and whether or not Kimco is deemed to be the Primary Beneficiary ("PB"). Such analysis determines if the entity should be consolidated for financial reporting purposes.

Kimco commends and supports the FASB's efforts to continue to develop high-quality accounting standards that improve the transparency, usefulness and credibility of financial reporting. This letter offers certain general and specific comments in response to the ED issued for comment on September 15, 2008.

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Kimco believes the ED would negatively impact the Company and the real estate industry in general in the following areas: (1) inconsistent consolidation or deconsolidation conclusions for similar entities due to different considerations of substantive kick-out rights between the ED and EITF 04-05, and differing interpretations of the term “power to direct” in the determination of a primary beneficiary in paragraph 14A(a); (2) the impracticality, as well as increased effort and costs, of obtaining information to perform ongoing assessments of VIEs and primary beneficiaries; and, (3) the unintended consequence of deconsolidating real estate joint venture investments.

Inconsistent Consolidation or Deconsolidation Conclusions for Similar Entities

With the exceptions noted below, Kimco supports a qualitative analysis for determining the primary beneficiary, as it introduces a principles-based approach and would reduce complexity in performing the analysis.

Substantive Kick-Out Rights

Kimco believes the application of substantive kick-out rights under current accounting guidance should not be changed. The proposal to eliminate substantive kick-out rights from the determination of the primary beneficiary of a VIE in accordance with paragraph 14A(a) of the ED would result in conflicting consolidation or deconsolidation treatment of marginally different investments in jointly owned entities. In the ED, substantive kick-out rights are not considered in the determination of the primary beneficiary’s controlling financial interest of a VIE, unless a single interest holder has the unilateral ability to exercise such rights. At the same time, substantive kick-out rights would be a factor in determining control of a voting interest entity under EITF 04-5.

Furthermore, under FIN 46(R), paragraph 5b(1), substantive kick-out rights are considered in determining whether an entity is a VIE, while such rights are not considered in determining the primary beneficiary under the ED.

Power to Direct

The meaning of the “power to direct” matters that most significantly impact the activities of a VIE in the determination of the primary beneficiary’s controlling interest is unclear in the ED. Kimco recommends that the ED provide more clarification of power to direct to ensure that preparers properly arrive at the same conclusion, under the same circumstances, in the determination of the primary beneficiary.

As Kimco recognizes that it would be difficult to capture all indicators of power to direct and acknowledges the advantages of a principles-based approach, Kimco suggests incorporating the IASB’s guidance in considering power to direct that is provided in the draft of the Consolidation Exposure Draft. This guidance would be useful to the preparer in the determination of the primary beneficiary and help to ensure that preparers arrive at consistent conclusions.

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Significant

The meaning of the right to receive benefits from the variable interest entity that could potentially be “significant” to the variable interest entity is unclear in the ED. Kimco recommends that the ED provide more clarification of the threshold of significance to ensure that preparers properly arrive at the same conclusion, under the same circumstances, in the determination of the primary beneficiary.

Ongoing Reconsiderations of VIEs and Primary Beneficiaries

Our interpretation of the ED would call for **daily** focus on whether facts and circumstances have changed so as to cause a change in the conclusions with respect to whether an entity is a VIE and/or which investor is the primary beneficiary. Kimco urges the Board to remove the requirement for “ongoing assessments.”

Kimco suggests that the Board accept the alternative in paragraph B11 of the ED, which recommends an annual assessment with interim assessments if specified triggering events occurred. The ongoing assessments of VIEs and primary beneficiaries would require significant costs to be incurred and present a burden in obtaining timely information, especially when the reporting entity is not the manager of the VIE and does not maintain the records of the VIE. Further, ongoing assessments may require regularly measuring the fair value of an investment property. This requirement would be very impractical to evaluate the sufficiency of the total equity investment at risk, especially since the assessments are expected to occur during a reporting period and the information may not be maintained by the reporting entity. Furthermore, new systems would have to be implemented to accommodate these ongoing assessments that would involve obtaining fair value information during the reporting period.

We thank the Board for its consideration of our recommendations and would be pleased to discuss these issues in more detail with the Board or staff at your convenience.

Respectfully submitted,



Paul Westbrook
Director of Accounting
Kimco Realty Corporation

