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Ms. Suzanne Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
P. O. Box 5116
Norwalk, CT 06856-5116

Subject: File Reference No. 1082-200

Dear Ms. Bielstein:

The Committee on Corporate Reporting (CCR) of Financial Executives International wishes to express its views on the proposed interpretation of ARB No. 51 (the "Interpretation"), Consolidation of Certain Special Purpose Entities. FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior financial executives. CCR is a technical committee of FEI, which reviews and responds to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. This response represents the views of CCR and not necessarily the views of FEI."

As we indicated in our April 15th letter, CCR agrees on the need for revised guidance on consolidation of SPEs and we are prepared to assist the Board as necessary in the short time frame before a final document is to be issued. We have found the Interpretation to be quite complex and ambiguous in areas that are central to the proper application of the standard. In addition, we are concerned that the criteria proposed will lead to consolidation of many "financial SPEs" even though the Board has indicated that those risk-dispersing entities should not be consolidated. We do not believe that the rule-based guidance in the Interpretation can be salvaged in the short transition period contemplated in the proposal or even over a substantially longer period. We therefore urge the Board to refocus the guidance in the Interpretation on broad principles and to require enhanced disclosures about SPEs that continue to be excluded from consolidation. We would welcome the opportunity to discuss our specific concerns, which are outlined below, with the Board and staff at its convenience.

We continue to believe that the central issue in this project is how the proposed variable interests consolidation model can be integrated into the present accounting model, which bases derecognition of financial assets on control. If the Board is unable to resolve this issue satisfactorily, we envision a number of adverse consequences that will diminish the usefulness of financial statements. For many companies, securitization of financial assets has become a routine financing activity. The derecognition of the securitized assets from the financial statements is based on the transferor's loss of control over them and recognition is given to new assets and liabilities related to rights and obligations retained by the transferor (the financial components approach). Under the proposed interpretation, it is quite possible that those same assets will be required to be included in the transferor's financial statements yet again through consolidation, even though they are presumptively beyond the reach of its creditors, even in the event of bankruptcy. These securitized assets do not meet the Conceptual Framework definition of assets – nor would the associated beneficial interests meet the definition of liabilities. Investors will not understand how an entity can show assets for an activity that has produced all of its cash flows through sale to another entity that is not accessible to the seller. We believe it is essential that the Board find a way to ensure that this does not happen. The proposed treatment for financial SPE's that disperse risk is an important step in that direction and we strongly encourage the Board to find a workable solution for the problems posed by the present definition.

Scope

We do not agree with the inclusion of leases within the scope of the Interpretation – a decision that we view as an amendment of SFAS 13, although it is not labeled as such in the draft. This decision will result in radically different accounting for two otherwise identical leasing transactions simply because one involved the use of an SPE and the other did not. The accounting guidance for leases is well established and has been debated extensively for more than two decades. Over that period, leasing transactions have been entered into in compliance with the existing accounting guidance and for legitimate business purposes. The present accounting for these arrangements was not considered abusive previously, nor is it the primary focus of this proposed Interpretation. To our knowledge, not one of the recent accounting irregularities has involved lease arrangements utilizing SPEs. Accordingly, applying this rule change after the fact to these transactions will only serve to confuse investors and cause misplaced concern about the legitimacy of the accounting originally applied. The nature of these arrangements clearly does not warrant that kind of attention. We therefore urge the Board to exclude leases from the scope of this Interpretation.

Financial SPEs

As the Board has acknowledged, SPE's that effectively diversify risk among numerous entities, such that no one party carries a disproportionate share should not be consolidated by any of its beneficiaries. Examples of such entities include multi-seller conduits for asset-backed commercial paper and SPE's that allow investors to purchase interests in collateralized debt obligations and similar instruments. These entities often have highly complex structures and no two are exactly the same, making a rule-based approach difficult, if not impossible, to apply successfully to

them. However, a common characteristic of these entities is that assets placed in them are subject to rigorous risk and credit reviews and the beneficial interests issued by them are regularly reviewed and rated by the major credit rating agencies. The size of the market for the beneficial interests issued by these financing vehicles exceeds one trillion dollars and provides an important source of liquidity to our economy. These structures have been in place for many years and they are well understood by market participants, regulators and rating agencies. Where assets are transferred to these entities through securitization transactions, the financial components approach underlying FAS 140 provides for appropriate financial statement recognition of rights and obligations retained by the seller. Accordingly, we believe it is essential that the FASB find a way to ensure that the Interpretation preserves the existing accounting for these structures while providing robust disclosure about the nature and effect of the reporting enterprise's relationships with the SPE on its financial statements.

It is our understanding that the criteria in paragraphs 22 and 23 of the Interpretation (related to so-called financial SPEs) are intended to provide a simplified analysis that would ensure that these risk-dispersing entities are not consolidated. Unfortunately, we believe that the rule-based criteria used to define financial SPE's are not determinative and will inevitably result in inappropriate consolidation. These criteria already have produced a large volume of questions and implementation issues surrounding the extent and nature of involvement in the activities of the SPE, the application of the subordination rule, why there is a presumption that fees are not market based and how that presumption may be overcome. In addition, some members have observed that application of these criteria could result in consolidation in some circumstances, while the Interpretation's variable interest rules would not. We do not view the Interpretation's rule-based criteria as a promising solution to the underlying problems the Board is trying to solve. We have therefore decided against providing a detailed inventory of questions and issues in our letter, lest we encourage further movement in the direction of a detailed standard. We believe that it would be far more productive to focus on more clearly articulating the underlying principles for non-consolidation of financial SPEs within the context of the variable interest requirements and providing examples of SPE structures that are consistent with non-consolidation. This approach, coupled with enhanced disclosures about SPE's that continue to be excluded from consolidated statements has a much better chance of success than the inclusion of additional interpretive guidance on the rule-based criteria.

Analysis of Variable Interests

CCR believes that the requirements for analyzing variable interests, outlined in paragraphs 20 and 21 of the proposed Interpretation, are not operational. Arrangements that utilize SPE's are often highly complex, involving numerous parties that each may have a relationship with the entity (e.g., beneficial interest holder, derivative counterparty, guarantor, etc.) that is considered a variable interest. In the more complex arrangements, the application of expected values to potential losses will be a very difficult and judgmental undertaking and it is at best debatable whether any two parties will reach similar conclusions based on similar facts. Determination of probabilities are highly subjective and can vary significantly over time, particularly with respect to derivative instruments. In at-the-margin situations, we can envision slight

differences in probability assessments having a significant effect on the outcome of the analysis. Accordingly, it is quite possible two or more parties may conclude that they are the primary beneficiary – or that none consolidate based on the criteria. We believe a more traditional approach that focuses on the best estimate of expected losses (i.e., the most likely scenario) rather than expected values would make the requirement simpler and more operational, resulting in more consistent application of the principle.

CCR also believes that the Board should limit consolidation to circumstances where the primary beneficiary holds a majority of the variable interests. We strongly disagree with the requirement to analyze the variable interests of others to determine whether it holds significantly more than other variable interest holders. Conceptually, it is difficult to understand why this requirement should not be symmetrical with an analysis based on voting interests – where consolidation is required based on holding a majority of the voting equity. Under generally accepted accounting principles, there is no parallel requirement for a holder of a minority voting interest to analyze other voting interests to determine whether it holds a significantly greater share than that held by others. Nor should there be. Furthermore, in circumstances where the variable interests are tranching, widely dispersed and publicly traded, it may not be feasible for an entity to perform the analysis required by the standard. We therefore recommend that consolidation be limited to circumstances in which a party holds a majority of the variable interests.

Substantive Operating Entities

CCR agrees with the Board that a carve-out is necessary for SPE's that are already consolidated by another entity. Further, we agree that the entity that consolidates should be substantive in its own right. The definition states that a Substantive Operating Entity (SOE) "has sufficient equity to finance its operations without support from any other enterprise or entity except its owners." Some have suggested that this requirement will foster a cottage industry in which small, privately-held enterprises would "rent" their balance sheets. We believe this perception is based on a misunderstanding of how this provision should be applied. If it were clearer that the analysis requires consideration of the size and resources of the SOE in relation to its ability to support all of the SPEs that it consolidates, which we think is the Board's intent, such abuses would be unlikely to occur.

Transition

CCR notes that the usual method required under APB 20 for a change in the reporting entity is retroactive restatement of all periods presented. We understand that it may be enormously difficult for some companies to restate history and we would therefore not propose an absolute requirement to restate. However, for those companies that have the information readily available, restatement more appropriately reflects the nature of the change and provides better information to investors. We suggest that the Board permit, but not require, companies to retroactively restate.

If the Board decides to stay with the transition guidance in the draft, it should address how the fair value recognition of SPE assets and liabilities should work, whether minority interests should be recognized for variable interests held by other parties, and what the subsequent accounting should be for the SPE assets and liabilities.

Effective Date

We expect that the earliest the Board will issue a final document will be sometime in the fourth quarter of this year, perhaps as late as December. Given that timetable, we do not believe that it will be feasible for companies to adopt as of the beginning of the fiscal period beginning April 1, 2003. Companies are already faced with implementation of three new standards: FAS 143, FAS 146 and the forthcoming interpretation on guarantees, for the first quarter of 2003. For calendar year companies, the proposed standard will require extensive work during annual closing – a time during which no resources can be spared. In addition, we fully expect to have to implement additional disclosure rules from the Securities and Exchange Commission during that same period. We therefore believe that the Board should delay the effective date for calendar year companies until at least the fourth quarter of 2003.

We appreciate your consideration of these important matters and welcome the opportunity to discuss any and all issues with the Board at its convenience. If you have questions regarding this letter, please feel free to contact me at (989) 636-1541.

Sincerely,

A handwritten signature in black ink, reading "Frank H. Brod". The signature is written in a cursive, flowing style.

Frank Brod
Chair, Committee on Corporate Reporting
Financial Executives International
