Letter of Comment No: 10
File Reference: 1200-001
Date Received: 07/30/03

new york state society of
NYSSCPA
certified public accountants
530 fifth avenue, new york, ny 10036-5101
www.nysscpa.org

July 30, 2003

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

By email: director@fasb.org

Re: File Reference 1200-001

Exposure Draft: Proposed Amendment to FASB Statement 140, *Qualifying Special-Purpose Entities and Isolation of Transferred Assets*

Dear Ms. Bielstein:

The New York State Society of Certified Public Accountants, the oldest state accounting association, represents approximately 30,000 CPAs that will implement the provisions proposed in the captioned exposure draft. NYSSCPA thanks FASB for the opportunity to comment on its exposure draft.

The NYSSCPA Financial Accounting Standards Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with the committee, please contact Robert Dyson, chair of the Financial Accounting Standards Committee, at (212) 842-7565, or Robert Colson, NYSSCPA staff, at (212) 719-8350.

Sincerely,

Jeffrey R. Hoops
President

Attachment

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NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON FASB EXPOSURE DRAFT

Proposed Amendment to FASB Statement 140, *Qualifying Special-Purpose Entities and Isolation of Transferred Assets*

File Reference No. 1200-001

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July 30, 2003

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FINANCIAL ACCOUNTING STANDARDS COMMITTEE

COMMENTS ON FASB EXPOSURE DRAFT

Proposed Amendment to FASB Statement 140, Qualifying Special-Purpose Entities and Isolation of Transferred Assets

File Reference 1200-001

While we applaud the FASB's efforts to better reflect economic realities, this exposure draft appears mostly designed to close loopholes highlighted by Interpretation 46. Such an exercise seems at odds with the "principles-based" approach that the FASB has proposed. Further, the number of recent revisions on this issue -- Statement 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, issued in 1996; replaced by Statement 140, of the same name; clarified by Technical Bulletin 01-1, *Amendment to Scope of Statement of Position 95-2, Financial Reporting by Nonpublic Investment Partnerships, to Include Commodity Pools,* and six FASB Staff Positions; and affected by Interpretation 46, Consolidation of Variable Interest Entities -- raises questions about whether the concepts on which these pronouncements are based have inherent flaws that call for reconsideration of the FASB's entire approach.

The overriding principles that should guide the accounting are the consolidation of all entities by the party in ultimate control and the derecognition of corresponding assets only when such control no longer exists. These principles should be communicated in a new comprehensive statement. This necessitates avoiding "safe harbors" such as QSPEs and looking through entities such as "orphaned" SPEs (i.e., owned by a trust rather than by another corporate entity) to determine who, if anyone, actually has control. A new comprehensive statement would also solve the problem noted in paragraph A13 where there are differences in applying Statement 140 and Interpretation 46 to the same SPE.

Using the basic concept of control will require extensive judgment by financial statement preparers, auditors, and regulators, but such judgment is preferable to detailed and frequently-changing rules that may allow substance to be hidden. Making such a new comprehensive standard operational will be a difficult process. Nonetheless, the expected difficulties should not deter the FASB from pursuing the proper path. The FASB should also consider how its approach will compare against the current and future standards of the International Accounting Standards Board, which have been focused on, and are likely to continue to be focused on, the principle of control. Lastly, the FASB should consider whether its approach diverges from the Securities and Exchange

Commission's recently issued study on principles-based accounting in conjunction with the Sarbanes-Oxley Act.

We appreciate the need for the FASB to respond to specific accounting abuses, and we hope this Exposure Draft resolves key issues. However, we believe that under the current standards, additional repairs will have to be made. With that concern in mind, we strongly encourage the FASB to take the comprehensive approach discussed above.