CREDIT SUISSE

CREDIT SUISSE GROUP
Paradeplatz 8
PO Box 1
8070 Zurich
Switzerland

30 October 2008

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116
USA
director@fasb.org

LETTER OF COMMENT NO. 14

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

Dear Mr. Golden:

Credit Suisse Group ("CSG") welcomes the opportunity to comment on the proposed Statement of Financial Accounting Standards, Amendments to FASB Interpretation No. 46(R) (the "Amendment"). CSG is registered as a foreign private issuer with the Securities and Exchange Commission and its consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States ("US GAAP").

CSG has previously responded to the changes in the consolidation rules that resulted in the issuance of FASB Interpretation No. 46, Consolidation of Variable Interest Entities, which was also issued during difficult times. While we would welcome any changes to accounting rules that would improve financial reporting, we caution that the FASB not rush to issue a document that fundamentally changes the approach to consolidation for variable interest entities ("VIEs") without ensuring it will produce the intended results – ideally by field testing the principles on real transactions.

Further, rather than issue what will ultimately be an interim U.S. rule, we recommend that the FASB consider deferring the issuance of this standard on a stand-alone basis. We believe that working with the IASB to prioritize and complete one global accounting rule on consolidation would better use the resources of both the FASB and the IASB, as well as preparers who might have to adopt two new consolidation rules in a short period of time. With the implementation of the proposed FSP FAS 140-e and FIN46(R)-e, the financial statement users should be provided with transparency requested through those extensive disclosure requirements. Therefore, having the Amendment as an interim measure before convergence takes place would not provide users with additional information that would not already be available.

If the Board proceeds to issue the Amendment as a final standard, following are our concerns with the proposal, including:

1. Definition of controlling financial interest

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Paradeplatz 8
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2. Reconsideration events
3. De Facto agent requirements under paragraph 14A

We have also addressed the Board's specific questions in the Appendix.

Controlling financial interest

We understand that the Board wants to identify a controlling financial interest in a VIE, as described in paragraph 14A, but it was not clear why the words controlling financial interest were eliminated from paragraph 5. Doesn't the Board think those characteristics identify a controlling financial interest?

We believe that controlling financial interest could be a term used to identify who has to consolidate an entity, irrespective of whether or not it is a voting interest entity or a VIE. When it relates to voting interest entities, the identification of the party to consolidation would be based on voting control.

For VIEs, identifying the party with the controlling financial interest is less straight forward. We agree the assessment should include a qualitative assessment that considers the powers and economic relationships of the parties involved with the entity. However, we do not believe all power is equal. In our view, power is the broad ability to unilaterally control the use and disposition of assets, including directing and modifying the terms of financing for those assets, and not merely the ability to make key decisions as a service provider. Certain roles that permit the party to make decisions have constraints, and if there is evidence the decision-making party is restricted by the terms of the transaction that would indicate that they do not have power indicative of a controlling financial interest. We believe the principle should be modified to clarify that when a party has power that is constrained for the benefit of other parties, that is a factor in determining whether that party has power that would require consolidation. Currently, the amendment just designates any decision maker, provided they have a variable interest, as the one with power who could potentially consolidate a VIE. Alternatively, if a party with power does not have a variable interest, then our interpretation is that that party could not be the primary beneficiary.

If the Board does not improve the definition of power to better incorporate the substance of the arrangements, we think that the Amendment's definition and application of power could have some unintended results. For example, servicers could be required to consolidate securitization vehicles when the substance of their role is more of a service provider than a party that has true power over the assets (due to the restrictions as outlined in the pooling and servicing agreements). Many of the examples identify a servicer as the party that has the power to direct matters that most significantly impact the activities related to the economic performance of the entity. However, the servicer is often also the transferor with other roles and risks and rewards in the transaction so it is clear they have a variable interest, power and

benefits that would identify them as the primary beneficiary under the proposed model. The examples do not address how to analyze a transaction where the servicer either is not a variable interest holder in accordance with Appendix B of FIN 46R or only receives a market-based fee. In fact, in Example 5 where we would have thought the primary servicer would not have had a variable interest, the Board has concluded that in fact the primary servicer is a variable interest holder even though it only receives a fixed fee and can be removed. We do not understand how the Board reached the conclusion the primary servicer is a variable interest holder in this example. We recommend the Board clarify the example and explain why the servicer is deemed to have variable interest.

While we agree that the servicer's decisions can have a significant impact on the economic results of the entity, the servicer is really hired to manage and mitigate losses arising from the real driver of the economic performance – the performance of the borrowers. We encourage the Board to think through the various scenarios that could involve a servicer, and parties with similar roles such as parties that have control over trust arrangements, to ensure that the model provides appropriate consolidation results.

We also note the literal reading of powers "most significantly impact the activities of a variable interest entity" as set forth in paragraph 14A(a) is subject to different interpretations. Some interpret this as indicating that power that most significantly impacts the activities of a VIE will be based on what decisions are important. For example, the decision to sell an asset is important. If a transaction has various parties that could decide to sell only portions of the portfolio, then no one party is in control, i.e., there is shared control over the most significant decision – whether to sell an asset. However, an alternative interpretation we have heard is that if one of those parties has power over the "most significant" portion of the portfolio, some believe that indicates the one with the most power, and provided they meet paragraph 14A(b), would be the party that is the primary beneficiary. We recommend that the Board clarify that when looking to see if power is shared it is based on decisions that are key to the entity, and even if one party can decide on more assets than others that does not give that party power over the "most significant" decisions of the entity.

We have concerns with the change in paragraph 14A(a) relating to substantive kick-out rights. The Board has concluded that in the qualitative assessment of whether a party has power, substantive kick-out rights are irrelevant in the analysis unless the kick-out rights are held by one party, including its related parties and de facto agents that can unilaterally exercise such rights. The Board acknowledges this is inconsistent with the concepts in other literature, as well as in FIN 46R, though it did not expand on those circumstances. We are very concerned with this inconsistency and believe that substantive kick-out rights indicate the party is hired, rather than having true power. If the Board wants to take an approach that is based on principles, we believe they have to decide, on a consistent basis, whether third-parties' rights to remove a party with power mitigates that party's control. Otherwise, there will be

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Paradeplatz 8
PO Box 1
8070 Zurich
Switzerland

inconsistencies in the literature, which we do not believe is appropriate as it raises continuous questions on what the overriding principle really is. Kick-out rights are important in determining whether you have a voting interest entity in Appendix B of FIN 46R and in determining whether you have to consolidate a voting interest entity. How can those same rights become irrelevant in whether a party has power over a VIE? Further, the revised reconsideration events (which we do not support as discussed below) can lead to circumstances where a voting interest entity can become a variable interest entity merely due to losses in the entity. If that entity were a limited partnership it is possible that it was not being consolidated due to kick-out rights pursuant with EITF Issue No. 04-5. When it potentially switches into the VIE model, does that mean the kick-out rights become irrelevant and now the general partner has power, even though the substantive kick-out rights still exist?

We observe that some members of the Board have expressed concern that the kick-out rights are not substantive. We believe that the requirements in EITF Issue 04-5, *Determining Whether a General Partner, or the General Partners as a Group, Controls* a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights ("EITF Issue 04-5") provides guidance on what are substantive kick-out rights, and the Board should allow preparers and auditors to make those judgments about whether kick-out rights meet the accounting requirements, rather than conclude that they should be ignored in the analysis of whether a party has power over a VIE. We do not support the FASB including this change unless it has thoroughly considered the impact of such an inconsistency.

On a related matter, the Amendment does not discuss the impact of participating or protective rights on the analysis of whether a party has power. In various U.S. GAAP literature, including EITF Issue 96-16, Investor's Accounting for an Investee When the Investor Has a Majority of the Voting Interest but the Minority Shareholder or Shareholders Have Certain Approval Right or Veto Rights, there is a well understood concept that when minority equity holders have participating rights they mitigate the control of the potential controlling party. We believe that investors with participating rights would indicate that control is shared, but we are concerned there could be a different interpretation given the Board's reversal of the impact of kick-out rights on the analysis. We recommend the FASB clarify its intention and address the inconsistencies raised by this new approach.

Reconsideration events

The Amendment significantly changes the reconsideration events for determining whether an entity is a VIE or a voting interest entity. We do not support the changes as we do not think the Board has provided sufficient basis that the benefits of tracking this information outweigh the additional operational costs. In the Basis of Conclusions, the Board notes that "certain constituents have expressed significant concerns about the lack of a reconsideration event for situations in which an entity experiences unanticipated economic results." The Board did not provide any specific

examples of transactions where classifying an entity as a voting interest entity instead of a VIE broadly resulted in misinformation to the users of the financial statements. We observe that the focus of the concerns in the Basis of Conclusion that led to the revised reconsideration events focus on the changes in the economic results of the entity, but the proposed model focuses primarily on power. There is an inherent inconsistency between the two. Since the test to determine whether an entity is or is not sufficiently capitalized pursuant to paragraph 5 is a quantitative test, we disagree with the Board's assessment in paragraph B15 which states "Because the guidance for determining the primary beneficiary in paragraph 14 of Interpretation 46(R) as amended by this proposed Statement, is expected to be primarily qualitative, the Board expects that these assessments will require less effort and be less costly than the quantitative assessments for an enterprise with a variable interest in a variable interest entity." While the analysis of whether there is sufficient equity in voting interest entities may be done qualitatively, currently that is only assessed at inception and to get those updated figures for every voting interest entity each quarter would require a very significant effort.

We are especially troubled that the reconsideration events cause swings in whether an entity is a VIE or voting interest entity, which results in ongoing changes on which model applies. We believe the Board has underestimated the volume of activity this entails and the resources that are required to 1) track which entities may no longer have sufficient equity and then 2) do a VIE analysis based on the qualitative power model – which is very different than the voting interest model. We have the same concerns about tracking whether a VIE becomes a voting interest entity due to a decrease in expected losses and an increase in expected returns. The Board noted in paragraph B15 that eliminating explicit references to specific reconsideration events is consistent with ARB No. 51, Consolidated Financial Statements ("ARB No. 51"). We do not currently reassess consolidation on entities subject to consolidation under ARB No. 51 based on economic results. Barring a restructuring or changes in contractual terms with an entity, changes in economic results do not impact which parties have power, which is why control is not reassessed under a voting model based on how the entity is performing. We strongly recommend the Board revert to the original reconsideration events and eliminate reconsideration merely based on changes in "facts and circumstances." If the Board retains the continuous facts and circumstances reconsideration events, it should provide more background on the concerns it is trying to address and the benefit to the users of the financial statements before it imposes these onerous requirements.

De Facto agents in Paragraph 14A

Paragraph 14A's qualitative assessment "shall include an assessment of the characteristics of the enterprise's variable interest or interest and other involvement (including those of related parties and de facto agents)." Paragraph 14A(a) also notes that when assessing whether one party has substantive kick-out rights it should consider the enterprise and its related parties and de facto agents.

We recommend that the FASB clarify that the de facto agents for these purposes would exclude parties that are deemed de facto agents under paragraph 16(d)(1). This is consistent with the exclusion of this factor in paragraph 4(h) and 5(c)(ii). Paragraph 16(d)(1) includes as de facto agents parties that have an agreement that restricts selling, transferring, or encumbering interests in the entity without the prior approval of the enterprise. In many structured transactions, there will be limitations on the ability for the parties to transfer their interests or roles without prior approval from one or more parties associated with the transaction. This is not because all the parties are de facto agents of each other, but rather is commercially required to ensure that the parties expected to perform or be involved in the structure cannot just walk away from their obligations. While we believe the basis of conclusion supports that the parties would not, in principle, be de facto agents, we note that this rule has been applied very strictly in practice with onerous and we believe unintended results. To simplify the application, and to be consistent with exceptions already in FIN 46R, we strongly support excluding de facto agents under paragraph 16(d)(1) in the analysis of whether a related party group has power or substantive kick-out rights. More broadly, we think it would be helpful if the Board would clarify in paragraph 16(d)(1) that it was not intended to capture restrictions on parties abilities to transfer their interests or obligations based on mutually agreed terms by willing, independent parties.

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We would welcome the opportunity to further elaborate on our concerns or provide the Board with additional examples for consideration. We have provided the Board with our request to participate in the November 6th Roundtable discussion. In the meantime, if you have any questions or would like any additional information on the comments we have provided herein, please do not hesitate to contact Todd Runyan in Zurich on +41 44 334 8063, Eric Smith in New York on (212) 538-5984, or Julie Roth in New York at (212) 538-4847.

Sincerely,

Rudolf Bless
Managing Director
Chief Accounting Officer

Julie Roth
Director
Accounting Policy and Assurance Group

CREDIT SUISSE

CREDIT SUISSE GROUP
Paradeplatz 8
PO Box 1
8070 Zurich
Switzerland

Appendix A

Following outlines responses to the Board's specific questions.

1. Will the proposed Statement meet the project's objectives to improve financial reporting by enterprises involved with variable interest entities and to provide more relevant and reliable information to users of financial statements?

   We believe the objectives may be met if the Board satisfactorily defines power, as previously discussed in our letter.

2. What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits to users of financial statements?

   The costs to track whether every entity has a potential change in VIE or voting interest entity status can be very significant. The costs are not just costs in dollar, but in human capital ensuring we track the information correctly. The volume of entities combined with the new requirements are very onerous. For example, if a voting interest entity becomes a VIE, that means an entirely different consolidation analysis is required and that new analysis ignores factors that could have been key in the original voting interest analysis (i.e., kick-out rights matter for a voting interest entity but no longer matter for a VIE). As noted above, we don't see the benefit of requiring those changes and analysis when nothing contractual or material has changed in the parties' arrangements with the entity.

3. The Board decided to adopt a more principles-based approach to determine the primary beneficiary of a variable interest entity. Do you believe the principles in paragraphs 14-14B of Interpretation 46(R), as amended by this proposed Statement, are sufficiently clear and operational?

   We believe that a principle is clear and operational when there is some consistency in its application and a common understanding of the intent of the principle. We believe the principle needs to be refined. As noted above, we believe the Amendment puts too much emphasis on decisions and needs to distinguish decisions that are power over assets or the entity from decisions that someone has been hired to perform based on their expertise and under restrictive guidelines. Further, while we appreciate that the Board has tried to demonstrate application of the model with examples, the examples do not address the challenges faced in application. For example, in Example 9, there is joint control over all decisions. However, there is no example where either power is not shared equally or where different parties have different powers and how to determine which party has the "most significant power." While we are not asking for a roadmap on how to analyze different transactions, we do believe that more

realistic examples with more complicated analysis would better establish the framework around the principle the Board is attempting to establish. We also believe that the FASB should consider not rushing to issue new guidance as it is our view that historically rushed consolidation guidance just leads to more time after its issuance determining the real impact to real transactions. We recommend that the FASB field test the provisions on real examples. CSG would be happy to assist in those efforts.

4. The Board concluded that it would be helpful to provide examples of the application of the principles in this proposed Statement. Do you believe that the examples in Appendix A clearly indicate how the principles in paragraphs 14-14B of Interpretation 46(R), as amended by this proposed Statement, would be applied? If not, please articulate what additional information or guidance is necessary, considering the basis for the Board's conclusions.

   As noted above, we believe examples where different parties have different power would be helpful. Further, we think the Board should provide an example where there is a servicer that only receives a fee rather than a fee in combination with other interests to demonstrate the Board's views on the appropriateness of servicers with nothing other than a fee consolidating the entire securitization trust. We also did not agree with the Board's conclusion in Example 7 that a lessee, by its use of a building under a lease, had power over the asset. A lease is a contract that the party with power can enter into, and we do not think this example sufficiently concluded on which party had power.

   While we disagree with the proposed changes on reconsideration events, if the Board retains these provisions it would be helpful to include in an example a situation where 1) the original party with power no longer has benefits or losses and 2) the reconsideration events over the life of a limited partnership where losses indicate the equity is no longer sufficient and where the structure had substantive kick-out rights and was not consolidated under the voting interest model. We think if the Board walks through these examples under the proposed model, they will gain a better appreciation of the concerns we have expressed on many of the proposed changes.

5. This proposed Statement retains the quantitative analysis for situations in which an enterprise cannot determine whether it is the primary beneficiary through the qualitative analysis in paragraph 14A of Interpretation 46(R), as amended by this proposed Statement. In Appendix A, each example either identifies a primary beneficiary or concludes that no primary beneficiary exists through a qualitative analysis. The Board may consider removing the quantitative analysis for determining whether an enterprise is the primary beneficiary of a variable interest entity. Do you believe that the quantitative analysis is necessary based on the

proposed amended guidance for determining the primary beneficiary? Do you believe that the quantitative analysis would be performed in many situations? Why or why not?

We do not support including the quantitative analysis. If the Board has concluded the qualitative assessment is the correct model, then it is confusing to have requirements that relate to the old risks and reward model. The Board's model should stand on its own without a back up model for when it is difficult to decide who does or does not have power. If the Board retains the quantitative step in paragraph 14B, we recommend the Board provide an example of when a quantitative analysis may be necessary.

6. For the reasons stated in paragraphs B6-B15 of this proposed Statement, the Board decided to require ongoing assessments to determine whether an entity is a variable interest entity and whether an enterprise is the primary beneficiary of a variable interest entity. Do you agree with the Board's decision to require ongoing assessments? If not, please provide reasons (conceptual or otherwise) as to why you disagree with these requirements considering all of the proposed amendments in the proposed Statement.

   As noted above, we strongly disagree with the changes and do not believe the Board has provided sufficient evidence of the benefits of this change. Namely, this requires an assessment of whether a voting interest entity is a VIE based on the results of the entity, and we do not see why changing a voting interest entity to a VIE or vice versa based on the results of the entity adds any value. If the entity was originally assessed based on voting control, then voting control continues to be relevant, even if the equity holders are experiencing losses. It is also inconsistent with the Board's overall focus on power as the key determinant for consolidation to require reconsideration based on something other than power, such as changes in the performance of the entity.

7. Do you believe that any exceptions to this proposed Statement should be made for private or not-for-profit entities? If so, please articulate the conceptual basis and reasons for the exceptions.

   No.

8. Financial statement users indicated that the information disclosed in accordance with Interpretation 46(R) about an enterprise's involvement or involvements with variable interest entities and the associated risks are often insufficient and untimely. Do you believe the disclosure requirements in this proposed Statement address those concerns?

CREDIT SUISSE GROUP
Paradeplatz 8
PO Box 1
8070 Zurich
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Please see CSG's comment letter response on Proposed FSP FAS 140-e and FIN 46(R)-e.

9. Should the elements of a consolidated variable interest entity be required or permitted to be classified separately from other elements in an enterprise's financial statements?

We believe that entities should be permitted the option to separately classify the assets and liabilities of consolidated VIEs