

Letter of Comment No: 72  
File Reference: 1100-LEU  
Date Received: 10/24/03



THE MILLS\*

October 24, 2003

Mr. Robert H. Herz, Chairman  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, Connecticut 06856-5116

RE: *Statement of Financial Accounting Standard No. 150 – Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*

Dear Mr. Herz:

We are writing to request the Board reconsider its decision not to defer the application of any portion of the above referenced statement (“SFAS 150”). We are especially concerned about its applicability to minority interests of real estate ventures. While we commend the Board in providing accounting guidance on increasingly complex financial transactions, we find it sometimes difficult to reflect the economic realities of the real estate industry within the framework of generally accepted accounting principals.

As a Real Estate Investment Trust (“REIT”), The Mills Corporation conducts much of its business through partnerships. Although the partnerships are expected to continue in perpetuity, underlying agreements naturally provide for final asset distributions in the event of liquidation or termination of the entity. For statutory purposes, some agreements also contain a finite life provision (often 99 years with indefinite extensions). Due to the presence of the final distribution and finite life clauses, interests in these partnerships are being viewed as mandatorily redeemable instruments to be accounted for at fair value.

The assets to which such minority interests have claim are, of course, real estate. Unlike other businesses, the value of a REIT’s “property, plant and equipment” tends to appreciate rather than depreciate over time. However, under current standards real estate assets are accounted for at book value (lower of historical cost or fair value, less depreciation) with no provision for fair value increases.

While we have no objection to classifying minority interests as liabilities, we believe that accounting for such interests at fair value, while stating the corresponding real estate assets at the lower of cost or fair value, will significantly understate our investors’ equity. Further, net income will be misrepresented as the fair value adjustment for minority interests will be included without a fair value adjustment to the corresponding assets.

We realize the real estate industry is a relatively small segment of population served by the Board. However, it is our understanding that the Board plans to address accounting for minority interests in a future phase of its Liability and Equity Project. We urge the Board to address the minority interests in real estate ventures within the scope of that project and exclude them from the application of SFAS 150.

Sincerely,

A handwritten signature in cursive script, appearing to read "MJ Morrow".

MJ Morrow  
Executive Vice President and Chief Financial Officer