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LETTER OF COMMENT NO. 51

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:

The National Association of Real Estate Investment Trusts® (NAREIT) welcomes this opportunity to respond to the request for comments from the Financial Accounting Standards Board (FASB or Board) on the proposal contained in the FASB Exposure Draft, *Amendments to FASB Interpretation No. 46(R)* (“the ED”).

NAREIT is the worldwide representative voice for real estate investment trusts (REITs) and publicly traded real estate companies with an interest in U.S. real estate and capital markets. NAREIT’s members are REITs and other businesses throughout the world that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.

Executive Summary

NAREIT 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. In particular, we support the efforts to achieve additional convergence between U.S. Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS). To further convergence, we recommend that, rather than issuing this ED as a final standard, the FASB should continue to work with the International Accounting Standards Board to develop a common consolidation model that can be applied by all entities reporting under either U.S. GAAP or IFRS.

This letter offers certain general and specific comments in response to the ED issued for comment on September 15, 2008.



NAREIT has discussed the ED with a task force of its members to determine their views and the industry-wide impacts that this ED would have on the real estate industry.

NAREIT believes the ED would negatively impact the accounting for jointly owned entities 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 variable interest entities (VIEs) and primary beneficiaries; and, 3) the unintended consequence of deconsolidating real estate joint ownership arrangements.

Negative Impacts of the ED on the Accounting for Jointly Owned Entities

Inconsistent Consolidation or Deconsolidation Conclusions for Similar Entities

With the exceptions noted below, NAREIT supports a qualitative analysis for determining the primary beneficiary, since it would reduce complexity, in most cases, in performing the analysis.

Substantive Kick-Out Rights

NAREIT 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 “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. NAREIT recommends that the ED clearly define the meaning of “power to direct” and provide explicit guidance for determining which interest holder has this power. We believe these recommendations would result in similar conclusions, under the same circumstances, in the determination of the primary beneficiary.

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As NAREIT recognizes that it would be difficult to capture all indicators of “power to direct” and acknowledges the advantages of a principles-based approach, NAREIT 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 enterprises arrive at consistent conclusions.

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. NAREIT urges the Board to remove the requirement for ongoing assessments. We suggest that the Board reconsider the alternative approach 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 to evaluate the sufficiency of the total equity investment at risk. This requirement would be very impractical, 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 during the reporting period, which would involve obtaining ongoing fair value information.

Potential Unintended Consequence

The ED could result in many real estate joint ownership arrangements being deconsolidated. These situations could arise when all investors of the joint ownership arrangement share the “power to direct;” however, only one investor has contributed capital. Under FIN 46(R), the primary beneficiary is the investor that provides the capital because they have the most risk. However, under the ED, the conclusion could be reached that neither investor is required to consolidate, since investors have joint “power to direct.” While one investor manages the property, including day-to-day operating management, leasing, cash management and the like, each investor shares the “power to direct matters that most significantly impact the activities of the variable interest entity.” Examples of these matters include, but are not limited to: 1) whether a property should be expanded; 2) the level of property-related debt to be incurred; and, 3) whether the property’s capital structure should be changed. We believe that deconsolidating these entities would diminish the usefulness of real estate company financial statements.

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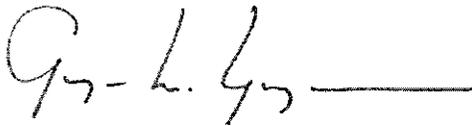
Additional Comments

Separate Classification of VIEs

NAREIT believes the elements of a consolidated VIE should be permitted, but not required, to be classified separately from other elements in an enterprise's financial statements.

If the Board or its staff would like to discuss NAREIT's views as expressed in this comment letter, please do not hesitate to contact George Yungmann at (202) 739-9432 or Sally Glenn at (202) 739-9442.

Respectfully submitted,



George L. Yungmann
Senior Vice President, Financial Standards



Sally R. Glenn
Director, Financial Standards

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