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

Re: File Reference No. 1082-200

Dear Director:

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We are writing in response to your invitation to comment on the Proposed Interpretation, Consolidation of Certain Special-Purpose Entities ("Exposure Draft").

Key ("Key"), headquartered in Cleveland, Ohio, is a bank-based financial services company that, at June 30, 2002, had assets of approximately \$83 billion. Financial institutions like Key commonly use special purpose entities for funding reasons and customer structured finance transactions. As a result, Key is very interested in issues concerning the consolidation of special purpose entities.

We appreciate the opportunity to comment on the Exposure Draft and support the Board's commitment to improve the transparency of financial reporting for special purpose entities. Key takes pride in providing detailed and comprehensive financial information to the investment community, and supports standards and interpretations that clearly result in accurate and useful information that can improve investor understanding and allow for more informed decisions.

Include more scope exceptions

Key, as a financial services institution, is in the business of providing financial support and services to customers. This support is provided through various means, such as service agreements, asset management and advisory agreements, leases, loans, standby letters of credit, loan commitments, derivative contracts, equity investments, mortgage-backed securities and subordinated debt investments. All of these are common products in the highly competitive and regulated financial services industry.

Examples of the many entities that Key is involved with that could be considered SPEs under the Exposure Draft (in addition to commercial paper conduits and securitization trusts) are low-income housing partnerships and funds, commercial real estate partnerships, private equity funds and mutual funds. These entities are typically not consolidated by any party and appear not to qualify for evaluation for consolidation based on voting interests.

As a result, the Exposure Draft would require Key to review detailed activity in many of our lines of business (i.e. asset management, commercial lending, structured finance, community development, principal investing, commercial real estate). We will have to determine which of our myriad of customers, investees and counterparties are SPEs; research whether fees we may receive from these variable interests are market-based; investigate whether other parties have provided significant financial support to the SPE and assess whether Key is the primary beneficiary. This represents an enormous undertaking and a tremendous drain of resources. While we do not expect to find that we are the primary beneficiary of the overwhelming majority of these entities, we will need to invest time and effort in demonstrating and documenting this fact.

On a more theoretical note, it is very difficult to see any benefit from consolidating entities for which Key has merely provided financial support. Our business is providing financial support. We are not in the business of, and our management has never had any intention of, controlling and operating such businesses or ventures and so do not believe that our balance sheet should be grossed up to show assets and liabilities of these entities. In many cases these are not even financial services related companies. Our balance sheet already reflects credit extended to or investments made in these entities as well as contingent liabilities related to off-balance-sheet financial instruments. We also disclose off-balance-sheet financial instruments and activities.

Based on the above, we urge the FASB to reconsider the scope of the interpretation to provide exceptions for entities such as mutual funds, private equity funds and real estate partnerships. We also recommend that you place more restrictions on variable interests that lead an enterprise to be considered the primary beneficiary. We discuss this comment in more detail below.

Require primary beneficiary to hold the majority of variable interests

The Exposure Draft aims to improve financial reporting by requiring the primary beneficiary of an SPE to include the SPE's results and assets and liabilities in the primary beneficiary's consolidated financial statements. We agree that this is the appropriate and desired outcome for situations in which one enterprise can be identified as having a clear controlling financial interest in the SPE.

The summary to the Exposure Draft states that the "Board believes that if a business enterprise has a controlling financial interest in an SPE, the assets, liabilities and results of the activities of the SPE should be included in consolidated financial statements with those of the business enterprise."

However, the proposed guidance appears focused on identifying a party to consolidate almost all SPEs. It states that if no enterprise holds a majority of the variable interests, the party holding a variable interest that is a significant portion of the total variable interests and that is significantly more than the variable interests held by any other party is the primary beneficiary and should consolidate the SPE.

This is different from the guidance used for evaluating consolidation based on voting interests (for entities that are not SPEs but rather substantive operating enterprises). Under existing accounting standards, an enterprise holding the majority of voting interests of another entity generally consolidates that entity. Consolidation is also required in situations where the enterprise has effective control over the entity without actually owning a majority of the voting interests. In situations where multiple parties each have a significant voting interest in a non-SPE but none owns a majority of the voting stock or has effective control, the entity is not consolidated.

This should be the outcome for SPEs as well. The goal of the evaluation should not be to ensure that an SPE is consolidated, but rather to ensure that the SPE is consolidated when appropriate; i.e. when one party has a controlling financial interest in the SPE. The evaluation for consolidation for SPEs and non-SPEs should reflect the same theory.

As such, it is recommended that the draft be revised to indicate that if an enterprise holds the majority of variable interests and has a controlling financial interest in the SPE, that enterprise is the primary beneficiary and should consolidate the SPE. This should also be the case if an enterprise has a controlling financial interest in the SPE even without holding a majority of the variable interests.

Require primary beneficiary to have a controlling financial interest in the SPE

The term "variable interests" as used in the Exposure Draft is meant to describe any instrument or means by which an enterprise provides significant financial support to a special purpose entity and can gain or lose from its involvement with an SPE.

The Exposure Draft indicates that limited partnership interests and subordinated debt securities are forms of variable interests. Key objects to the presumption that a significant variable interest in the form of a limited partnership interest conveys a controlling financial interest in the partnership SPE and that the limited partner may have to consolidate the partnership. The limited partners are not involved in the management of the partnership and do not control its affairs. This is why limited partners do not currently consolidate partnerships in which they invest.

While it is true that a limited partner may invest substantial amounts in a partnership and therefore hold a significant variable interest in the SPE, the limited partner has limited liability and stands to lose only the amount invested in the partnership and the expected return on that investment. The amount of the investment is recorded on the partner's balance sheet and so the partner's financial statements already reflect the extent of the partner's involvement in the SPE.

The same is true for holders of subordinated debt securities issued by an SPE. While the security holders may have invested substantial amounts in the SPE, their losses are limited to the amount of their investments and the return on those investments and they do not control the SPE's activities.

In both of these cases, there is no benefit from having parties without control over the SPE's activities consolidate the SPE in which they have invested or to whom they have lent money.

This is why the primary beneficiary, as mentioned above, should be the enterprise that both holds a majority of the variable interests and has a controlling financial interest in an SPE.

Revise definition of related parties

In paragraph 15, the Exposure Draft states that an enterprise that has a variable interest in an SPE should treat other variable interests in that SPE held by its related parties as its own interests for purposes of determining whether it is the primary beneficiary. Included in the list of related parties is a party that has a de facto agency relationship with the enterprise as a result of an agreement that it cannot sell, transfer, or encumber its interest in the SPE without the prior approval of the enterprise.

It is very common to include a provision in agreements, for example a partnership agreement, that interests in the partnership cannot be sold or transferred without the prior approval of the other party or parties. Typically the approver cannot reasonably withhold approval for a sale or transfer so the approval is not a substantive or significant barrier to be overcome. One reason such provisions may be included in an agreement is to ensure that the entity continues to receive a certain tax status after the sale or transfer.

We do not believe that such a provision results in a de facto agency relationship. Nor do we believe that requiring prior approval for sales or transfers converts otherwise unrelated parties into related parties. As a result, we ask that you omit 15c from the list of related parties.

Require consolidation of fewer financial SPEs

We agree that certain types of SPEs, financial SPEs, should not be consolidated because they diversify risks and potential benefits to such an extent that there is no primary beneficiary. Therefore, providing additional guidance in paragraphs 22 and 23 for evaluating variable interests related to financial SPEs is appropriate.

Because of the valuable role played by financial SPEs in diversifying risk, the FASB's goal in providing the additional guidance in paragraphs 22 and 23 should be to reduce the possibility of consolidation for such SPEs. However, the current wording of paragraph 23 does not achieve this objective. In fact, it could result in the consolidation of many financial SPEs with significant adverse effects on the capital markets, the cost of funds and the level of activity conducted through financial SPEs. Issues of concern to Key are discussed below.

First, please confirm that the condition described in 23b refers to variable interests (guarantees, back-up lending arrangements, liquidity, credit or asset support) that are subordinate to the interests of other parties. Key provides liquidity support to commercial paper conduits in the normal course of business, however this support is not subordinate to the interests of other parties. It seems inappropriate to be considered a potential primary beneficiary of these conduits when other parties are in the first loss position related to the SPE's assets and activities.

Second, variable interests in a financial SPE should be expanded to include subordinate interests held in other SPEs used to transfer assets to a financial SPE. Assets are frequently

transferred to a financial SPE using multiple SPEs, resulting in the financial SPE holding beneficial interests in the intermediate SPE. In these situations, the first level of credit enhancement in the assets underlying the beneficial interests held by the financial SPE is typically provided by the holders of the subordinate interests in the intermediate SPE. The primary beneficiary of the financial SPE should be the party that is in the first loss position related to the assets of the financial SPE. Therefore, it seems reasonable to consider subordinate interests in an intermediate SPE as variable interests in the financial SPE when evaluating whether to consolidate this entity.

Third, paragraph 23c should not include a presumption that fees received are not market-based. Fees should be considered market-based if they are determined through negotiations with unrelated third parties in a competitive environment or if they fall within a observable range of prices in the marketplace for transactions similar in nature and with similar asset types.

Expand the silo approach

The Exposure Draft requires a transferor of assets to a multi-seller conduit to consider the portion of the conduit related to its assets as a separate SPE (or silo) for consolidation purposes. This is also the case for any other party whose rights and obligations are limited to specifically identified assets within the conduit.

As currently worded, paragraph 17 could result in the same assets and liabilities being consolidated by two parties. The transferor may be required to consolidate a silo based on its variable interests in that silo while another party (the administrator, for example) may determine that it has to consolidate the entire SPE (all of the silos) based on the extent of its involvement with the SPE.

We recommend that multi-seller conduits be evaluated for consolidation by all parties holding variable interests in it or its silos on a silo by silo basis to avoid this situation.

Reassess no more frequently than on an annual basis

Due to the number of SPEs that Key, like other financial institutions, is involved with, the current proposal to reassess consolidation of various SPEs at each reporting date will entail considerable time and effort each quarter. Considering accounting standards that have recently been issued, accounting standards that are expected to be issued in the near future, accelerated SEC reporting requirements and the Sarbanes-Oxley Act compliance requirements, accounting and financial reporting departments are staggering under vastly increased compliance burdens and struggling to keep up with all the changes.

Rather than require an automatic reevaluation at each reporting date, it is recommended that reevaluation only take place if events or changes have occurred such as there has been a change in an enterprise's variable interests or if the enterprise is aware of changes in variable interests held by other parties that could impact its consolidation decision. If the FASB requires that a periodic reassessment be performed, similar to the guidance in SFAS No. 142, such reassessments should be performed on an annual basis, unless changes in variable interests require the evaluation to be performed earlier.

Add more time for transition

We appreciate the FASB's desire and the investor community's need to see new accounting guidance on SPE consolidations implemented as soon as possible. However, because of the breadth of the scope of the new guidance, the number of entities that will be affected and the need to gather information on all other parties involved with SPEs, additional time should be provided for companies to assess which entities they are involved with are considered SPEs and evaluate which are required to be consolidated. We suggest that the transition period for pre-existing SPEs be extended by making the provisions effective for pre-existing SPEs as of the beginning of fiscal years starting after September 15, 2003. Assuming that the interpretation is issued in the fourth quarter of 2002, this allows 9 months to one year for transition.

We appreciate the opportunity to comment on the Exposure Draft and hope that the Board will seriously consider our issues and concerns. Key advocates changes in accounting standards and disclosure requirements that will improve financial reporting and supports the FASB in its project to provide guidance for the consolidation of special purposes entities. However, Key also believes that new guidance should lead to a more appropriate and useful presentation of information in the financial statements and hopes that the Exposure Draft will be revised to address comments like those included in this letter to better achieve this result.

We welcome the opportunity to discuss these issues with you in more detail. Please feel free to contact Chuck Maimbourg, Director of Accounting Policy & Research at 216-689-4082 or myself at 216-689-3564.

Sincerely,

Lee Irving
Executive Vice President and Chief Accounting Officer