Deutsche Bank

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August 30, 2002

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Re: File Reference No. 1082-200

Exposure Draft on Consolidation of Certain Special Purpose Entities, a Proposed

Interpretation of ARB No. 51

Dear Ms. Bielstein:

We appreciate the opportunity to provide comments on the Exposure Draft for Consolidation of Certain Special Purpose Entities, a Proposed Interpretation of ARB No. 51 (the "Exposure Draft"). We further appreciate the FASB's willingness to work with constituents and to respond to industry input already received on this subject. However, we are concerned that the guidance, as proposed, is overly complicated and restrictive, extremely difficult to implement and in certain instances contradictory to higher-level US GAAP. We believe that progress has been made on this project, but we do have certain comments and suggestions for improvement, which we hope will be useful for your deliberations.

Summary

The following is a summary of our suggestions to the FASB.

Consolidation Based on Variable Interests

Base the consolidation requirement for variable interests on the holding of a
majority of those interests. The presumption of consolidation based on a
majority holding could be overcome when other factors such as
management contracts or certain participating rights exist.

Consolidation Based on Voting Interests

- Provide for consolidation based on voting interests when those voting interests allow the holder an element of control regardless of whether those interests are in debt or equity form.
- Do not preclude consolidation based on voting interests simply because a "nominal" class of
 equity was issued that is subordinate to another equity class.
- Allow special purpose entities ("SPEs") to overcome the 10 percent equity presumption by
 using the criteria that the equity invested in an SPE is greater than or equal to expected future
 losses.

SPEs that Hold Certain Financial Assets ("FSPEs")

- Do not subject FSPEs to the qualifying SPE ("QSPE") limitations on holding derivatives included in paragraph 35c(2) of SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, ("SFAS No. 140").
- For clarity, revise certain paragraph 22(b) criteria for FSPEs.
- Add size criteria to the consolidation test for FSPEs so that this test is consistent with the general variable interest test.
- Allow FSPEs to hold non-passive financial assets such as equity securities.

Market-Based Fees

 Among other matters, make the presumption that fees are market-based unless evidence exists to the contrary.

Other Matters

- Better describe the terms SPE and Substantive Operating Enterprise.
- Clearly indicate that administrators of SPEs should also apply the "silo" approach.
- Do not require administrators of SPEs to disclose the financial information of the SPEs they service.
- Move the implementation date to the beginning of the first fiscal period beginning after September 15, 2003, since grandfathering will not be allowed.

Further detail supporting each of these comments follows.

Consolidation Based on Variable Interests

Significant Variability

We urge the FASB to base the consolidation requirement for variable interests on the holding of a majority of those interests. The presumption of consolidation based on a majority holding of variable interests would be overcome when other factors such as management contracts or certain participating rights exist. As noted in paragraph B17, we acknowledge that a parent has never been required to have a majority of risks and benefits from its subsidiary in order to consolidate that subsidiary. However, the current guidance does not include a consolidation requirement for a party that has a financial interest that is significant and significantly more than any other individual party. EITF Issue No. 97-2, Application of FASB Statement No. 94 and APB Opinion No. 16 to Physician Practice Management Entities and Certain Other Entities with Contractual Management Arrangements, ("EITF 97-2") provides three general criteria, (1) term, (2) control and (3) financial interest, all of which must be met to determine that a reporting entity has a controlling financial interest. A significant financial interest is only one of those criteria. Similarly, EITF Issue No. 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 or Veto Rights, ("EITF 96-16") discusses how a majority owner would not consolidate when the minority holders have certain substantive participating rights.

We believe that the requirement that a reporting entity should consolidate when its variable interest is significant and significantly more than any other individual party extends the Exposure Draft beyond an Interpretation and is instead a change to existing guidance. In addition, a majority presumption will be more workable in practice as a reporting entity will be aware when it has a majority or significant interest and also has other elements of control as discussed in EITF 97-2 and EITF 96-16. A reporting entity may not know when the significance of its interest has been affected by other parties' actions. The FASB acknowledged this significant point in footnote 5 "An entity is not required to conduct an exhaustive search for information about the actions of other unrelated parties that might cause the entity to become the primary beneficiary or to cease to be the primary beneficiary."

Consolidation Based on Voting Interests

Equity in form

We suggest that consolidation be based on voting interests when those voting interests would allow the holder to have a controlling financial interest regardless of whether those interests are in debt or equity form. As noted above, EITF 97-2 establishes that a controlling financial interest can be achieved by a reporting entity without that entity owning any voting equity interest. It seems inconsistent to require that voting interests described in paragraph 9 be

equity in form. We believe that consolidation should be based on voting financial interests when the substance of those interests would allow for a controlling financial interest.

Nominal Equity

We suggest that the FASB not preclude consolidation based on voting interests simply because a "nominal" class of equity was issued that is subordinate to another equity class. The main premise of paragraph 9 seems to be that consolidation should be based on voting interests when those voting interests allow for a controlling financial interest. However, paragraph 9(c) states that the equity investment must be subordinate to all other equity investments. This would seem to preclude consolidation based on voting rights simply because a nominal, but subordinate, class of equity was issued solely to comply with legal or regulatory requirements. We do not believe that this should be the case when the substance of an SPE structure would allow a controlling financial interest via the substantive equity class.

Comparison to Substantive Operating Enterprises

We urge the FASB to allow SPEs to overcome the 10 percent equity presumption by determining that the equity invested in an SPE is greater than or equal to expected future losses. It is unclear why in paragraph 11 the FASB will allow a reporting entity to determine that its equity investment is sufficient by determining that the equity invested in an SPE is greater than or equal to expected future losses, but in paragraph 12 will not allow this test to overcome the 10 percent equity presumption. Paragraph 12 explains that the 10 percent equity presumption is overcome only if there is persuasive evidence that an equity investment of less than 10 percent of total assets is comparable to the equity of businesses that are not SPEs and that engage in similar transactions with similar risks (emphasis added). This restriction seems contrary to the spirit of paragraph 9(b).

Many risk dispersing SPEs that invest in high credit quality assets do not need capital greater than or equal to 10 percent of total assets. These SPEs may issue equity in form that would otherwise meet the criteria to be consolidated based on voting interests. It may not always be possible to find comparable operating entities for these SPEs. The FASB acknowledges that, "Most SPEs serve valid business purposes, for example, by isolating assets or activities to protect the interests of creditors or other investors or to allocate risks among participants." It would be unduly restrictive to prevent such SPEs from consolidation based on voting rights because they are precluded from proving that their equity is sufficient by determining that the equity invested in an SPE is greater than or equal to expected future losses.

SPEs That Hold Certain Financial Assets

Limits on Holding Derivatives

To achieve the goal of preventing certain risk dispersing SPEs from improper consolidation, we urge the FASB not to restrict FSPEs to the SFAS No. 140 paragraph 35(c)(2) limitations on derivatives. Based on past Board meetings, it was our impression that the FSPE

concept was meant to prevent certain risk dispersing SPEs from improper consolidation. This was acknowledged by the FASB in paragraph B19, "In its deliberations, the Board acknowledged that while many SPEs benefit a primary beneficiary, some SPEs effectively diversify risks and potential benefits related to certain assets or activities." However, as currently worded, many typical structures will not meet the FSPE criteria in paragraph 22 because of the limitations on holding derivatives. The proposed definition of an FSPE is largely dependent on the definition of a QSPE, which among other criteria provides that a QSPE can only hold derivatives that are "passive" in nature. In addition, if adopted as currently drafted, the proposed amendments to SFAS No. 133¹ and the related D-2 guidance will further limit an FSPE's ability to hold derivatives. This is because the proposed amendment to SFAS No. 133 and the related D-2 guidance will result in more derivatives being bifurcated from beneficial interests and FSPEs will not be allowed to hold derivatives that relate to beneficial interests that are themselves derivatives.

We understand the Board's desire to prevent an SPE from inappropriately disguising derivatives and we believe that this concern will be addressed by the proposed amendment to SFAS No. 133. We also understand the condition to restrict QSPEs to holding passive derivatives, since QSPEs were meant to be passive vehicles. However, FSPEs are intended to have certain discretion to buy and sell assets, so the limits on passive derivatives that pertain to beneficial interests are unnecessary and inconsistent with this intention.

Restrictions on Purchase and Sales of Assets

For clarity, we suggest that criteria (2) and (3) for FSPE's included in paragraph 22(b) be revised as follows:

- (2) They are not necessarily restricted to acquiring their assets by transfer from a transferor as described in Statement 140, but their discretion to purchase assets is restricted as described in paragraph 35(b) of Statement 140.
- (3) They are not necessarily subject to the restrictions on sales of assets described in paragraphs 35(d) and 42-45 of Statement 140, but their discretion to sell assets is restricted as described in paragraph 35(b) of Statement 140.

It is unclear how to interpret "not necessarily." We presume that that the FASB did not mean for FSPEs to be allowed unlimited discretion in buying and selling assets, but neither were FSPEs to be subject to the strict limitations on the transfer and sale of assets for QSPEs. We believe the term "not necessarily" is redundant. Paragraph 22(b) already indicates that an FSPE's discretion to buy and sell assets must be limited because it encompasses paragraph 35(b) of

¹ Guidance that may affect QSPEs, and by extension to this Interpretation FSPEs, is pending in the exposure draft for SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, and the guidance in tentative Statement 133 Implementation Issues Nos. A20, B12, B36, C17, D2 and E21. Accordingly, we suggest that the exposure draft on SFAS No. 133 be released at the same time as this Interpretation, so that FSPEs can be properly evaluated.

SFAS No. 140 which describes how the permitted activities of QSPEs and FSPEs are significantly limited. In addition, criteria (3) of paragraph 22(b) refers to paragraphs 42–45 of SFAS No. 140. Paragraphs 42–45 illustrate the sale and disposal of assets restrictions of paragraph 35(d), so by inference we presume that paragraph 35(d) was not meant to apply to FSPEs.

Consistency with General Variable Interest Approach

If the FASB adopts the majority presumption for consolidation based on variable interests as discussed above, we suggest that consolidation for FSPEs also be based on a majority threshold. If the FASB does not adopt the majority presumption for consolidation based on variable interests, we suggest that any size criteria adopted for consolidation under the general variable interest test apply equally to the consolidation test for FSPEs.

Paragraph 23 provides that "an enterprise that meets at least two of those conditions provides significant financial support through a variable interest and shall follow the guidance in items (b) and (c) of paragraph 13 (because two enterprises could meet two of those conditions)." It seems that the size criteria of paragraph 13(c) would not apply unless there are two enterprises that meet at least two of three conditions in paragraph 23. If this were the case, then a relatively insignificant variable interest holder in an FSPE would have to consolidate if it was the only entity that met two of the three criteria in paragraph 23. Similarly, a substantial variable interest holder in an FSPE would not consolidate if it did not meet two of the three criteria in paragraph 23. Furthermore, if the FSPE test does not incorporate a size criterion, different consolidation conclusions involving the same variable interests could be reached depending on (i) whether or not an SPE was an FSPE and (ii) whether or not certain parties had discretion to buy and sell assets and/or receive market-based fees. These results seems inconsistent with the stated objective in paragraph B20 that the FSPE criteria are meant to be a simplification of the general variable interest approach to improve consistency of application.

Limits On Holding Passive Assets

We suggest that the FASB allow FSPEs to hold non-passive financial assets such as equity securities. We understand the condition that QSPEs generally cannot hold equity securities because QSPEs were meant to be passive. Similar to our arguments about the limitations on derivatives, FSPEs are intended to have certain discretion to buy and sell assets, so the limits on holding passive assets seem inconsistent with this intention.

Market-based fees

We agree that non market-based fees should be considered as variable interests, however we have the following comments on the paragraph 19 explanation of market-based fees.

It is unclear why an otherwise market-based fee negotiated at arm's length under competitive conditions should become a variable interest because the receiver of the fee also holds another variable interest. We suggest that this undue restriction be removed.

It is also unclear why, if a service provider's fee is variable and the service provider made a "significant incremental investment in its own business in order to earn the fee", such an investment should also be considered in determining if the enterprise has a variable interest. To some extent all businesses make an investment to service their clients. Current guidance does not require servicers of substantive operating enterprises to consider their fees as some form of financial interest because they had to make an investment in their business to earn the fee. For consistency, we suggest that this restriction be removed.

We believe that the presumption in the Exposure Draft that fees are non market-based unless they can be demonstrated to be comparable to fees in similar observable arm's-length transactions and arrangements is unduly restrictive. In many cases, observable arm's-length transactions and arrangements will not be available. We suggest that fees, especially those that were negotiated under arm's-length competitive conditions, be presumed to be market-based unless evidence exists to the contrary.

Other Matters

Definition of an SPE

The Interpretation is meant to provide clarity for the consolidation of SPEs, but does not adequately describe what an SPE is. Paragraph 3 states that "The distinguishing characteristic of SPEs subject to this Interpretation is that voting equity interests do not give the holders a controlling financial interest regardless of the percentage owned." We agree that this is a good characteristic of an SPE, however we suggest that the FASB provide a more robust description of an SPE. We believe the April 10, 2002, Draft Proposed Interpretation on SPEs (the "April 10th Draft") provided a better broad-based guideline for what an SPE is. In summary, the characteristics of an SPE included: (1) it has limited activities and purpose; (2) its operating decisions are effectively specified in the SPE's governing documents and agreements, with limited or non-existent decisionmaking power by the parties involved with the SPE; (3) its capital structure has significant leverage; and (4) it is not a business as described in EITF Issue No. 98-3, Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business ("EITF 98-3"). We encourage the Board to return to this description with the addition of the characteristic described in paragraph 3 of the Exposure Draft. In addition, we encourage the Board to emphasize as it did in the April 10th Draft that an SPE need not have all of these characteristics and that identification of an SPE requires professional judgment.

Substantive Operating Enterprise

The Interpretation also does not provide a clear description of what is not an SPE or, in other words, what is a substantive operating enterprise. It is unclear why the Board chose not to utilize the description of a business provided in EITF 98-3, especially since the paragraph 7(a) definition of a substantive operating enterprise seems to encompass many of the elements already included in EITF 98-3. In addition, the use of a different description of an enterprise for this Interpretation will not facilitate the Board's goal of providing clarity. We suggest that the Board base its description of a substantive operating enterprise on EITF 98-3 and add the additional elements from paragraph 7(a). We encourage the Board also to emphasize that a substantive operating enterprise need not have all of these characteristics and that identification of a substantive operating enterprise requires professional judgment.

"Silos"

We suggest that the FASB clearly indicate that administrators of SPEs as well as the SPE's variable interest holders should apply the "silo" approach. The April 10th Draft included examples of how the silo approach should be applied by administrators. However, the Exposure Draft is unclear about this point because administrators would not necessarily meet the paragraph 17 requirements to apply this approach.

Disclosures by Administrators

We suggest that all parties to SPEs that are not the primary beneficiary only disclose a description of their involvement with those SPEs, such as the nature of their services, and any voting or variable interests (liquidity commitments, credit enhancements, derivatives, etc.). We see no benefit to users of financial statements in having administrators disclose the financial information of the SPEs they service. We suggest that the paragraph 25 disclosure requirements for administrators be removed.

If the Board in fact intends to require administrators to disclose the financial information of the SPEs to whom they provide services, we suggest that only those administrators that have a significant voting or significant variable interest should make such disclosures. We propose that paragraph 25 be revised as follows, "An enterprise with a significant voting equity interest or a significant variable interest that (a) provides...".

Transition

Since the Exposure Draft does not allow for grandfathering, the reporting entities will have to undertake the difficult task of reassessing all of their SPEs. This task will be further complicated due to the expected release of the final guidance at year-end. So that reporting entities can adequately modify their systems and control processes and "cure" certain SPEs where necessary, we suggest that the FASB move the implementation date to the beginning of the first fiscal period beginning after September 15, 2003.

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Conclusion

Again, we appreciate the FASB's efforts to provide additional guidance on accounting for SPEs. We believe that progress has been made on this project, but that there is room for further improvement in this difficult area. We hope that these comments are useful for your deliberations.

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If you have any questions regarding this letter, please call me (212-602-1776) or James Curry (212-602-1780) or send an electronic message to: corporate.accounting.policy@db.com.

Very truly yours,

Peggy H. Capomaggi Managing Director – Accounting Policy

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