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MP&T Director- File Reference 1082-200
Financial Accounting Standards Board
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Exposure Draft of the Proposed Interpretation – Consolidation of Certain Special-Purpose Entities, an Interpretation of ARB No. 51

Ladies and Gentlemen:

SunTrust Banks, Inc. (SunTrust) welcomes the opportunity to provide our comments on the above referenced Exposure Draft.

SunTrust, headquartered in Atlanta, Georgia, is one of the nation's largest commercial banking organizations. The company operates through an extensive distribution network in Alabama, Florida, Georgia, Maryland, Tennessee, Virginia and the District of Columbia and also serves customers in selected markets nationally. SunTrust's primary businesses include deposit, credit, trust and investment services. Through various subsidiaries, the company provides credit cards, leasing, mortgage banking, insurance, brokerage and capital market services.

Given the current environment, we commend the Board's decision to clarify the accounting literature related to special-purpose entities. We also applaud the Board's decision to enhance the disclosure requirements related to these entities. Accordingly, we support the issuance of a final Interpretation.

We believe, however, there are opportunities for additional clarification that will reduce inconsistencies in the application of this Interpretation. We suggest the Board provide several practical examples in the appendix to the final Interpretation to illustrate the application of these rules.

In general, we believe the Interpretation allows for users to exercise a significant amount of judgment. We support the Board's movement towards principles based accounting. With subject matter as complex as special-purpose entities, examples will increase the likelihood of consistent application of the principle. Additionally, many of the larger accounting firms have attempted to simplify the Interpretation by preparing decision trees or flowcharts. The firm's analyses have been useful, however each of them has slight variations. Due to the variations in the analyses, we believe it would be useful for the Board to provide a decision tree as an appendix to the final Interpretation. Our specific comments are as follows:

Scope

A substantive operating entity (SOE), as defined in the Interpretation, is one type of entity that is excluded from the consolidation provisions of this Interpretation. We believe that the Board has given users a basis to determine whether or not an entity is an SOE; however, we request that the Board include further guidance as to the common characteristics of an SOE and provide examples of entities that qualify as an SOE. We believe that further clarifying the definition of an SOE is important, particularly if the Board is not going to define an SPE. Additionally, the scope is not clear as to whether or not entities are required to be classified as either an SPE or an SOE. If it can be determined that an entity is not an SPE, does that automatically mean the entity is an SOE, or are there opportunities for an entity to be classified as some hybrid between an SOE or an SPE? If so, what accounting would the Board suggest for these hybrid entities?

We believe the intent of the Board could be misconstrued under the current definition of an SOE. For example, the proposed definition of an SOE implies that a company such as Amazon.com would not qualify as an SOE because, currently, Amazon has negative equity. As such, it does not appear that Amazon has "sufficient equity to finance its operations" as the Interpretation requires. However, when looking at the substance of an entity such as Amazon, it does not seem appropriate to classify Amazon as an SPE. Many entities can operate independently and finance operations with minimal or negative equity, as illustrated with Amazon. As a result, the Board may wish to reconsider the language with regard to the amount of equity an entity needs to qualify as an SOE. Again, we believe that the application of the Interpretation could be clarified through the use of examples of entities that qualify as SOE's.

If the Board is not inclined to offer further guidance as to what constitutes an SOE, we request that the Board provide a comprehensive definition of an SPE. We believe this would be useful because the concept of an SPE is not well defined in any existing authoritative literature.

We appreciate the Board's guidance related to properly identifying entities that qualify as QSPE's and FSPE's. We would like to request that the Board also consider specific guidance related to Multi-Seller Asset-Backed Commercial Paper Conduits (Conduits). Please note that these Conduits are distinctly different from other types of conduits, and additionally, it has been estimated that as of July 2002, there were between 360 - 400 of these Conduits, holding approximately \$700 billion in asset-backed commercial paper. Given these sizeable numbers, we believe that there is not only a cost / benefit to specifically addressing these entities, but the Board will also achieve increased comparability and consistency in application among these 360 - 400 entities. Accordingly, we request that the Board consider either including examples or incorporating guidelines specific to these types of entities.

Voting Interests

The evaluation for consolidation based on voting interests is dependent on meeting several conditions.

One condition requires that the amount of the equity investment be sufficient to allow the SPE to finance its activities without relying on financial support from variable interest holders. The Interpretation further clarifies that the equity investment should be greater than or equal to the expected future losses of the SPE at all times during the SPE's existence. We believe that additional information should be provided in the final Interpretation that would assist companies in determining how to calculate "expected future losses." Although the Interpretation references a footnote stating that "expected future losses refers to a probability-weighted estimate of losses without considering

possible gains,” this does not provide enough guidance for the practical application of this provision. We also request that the Board consider instances in which the variable interest holders are not expecting future losses.

The Board establishes a 10% rule in evaluating the sufficiency of an equity investment. We do not believe the 10% threshold should be a firm rule in the final Interpretation. Consider a situation involving an SPE that does not have a public market for benchmarking. If this entity engages in low risk transactions with a remote probability of losses, then it appears that the proposed equity requirements are too strict. We believe that an entity with certain characteristics can demonstrate that equity of less than 10% is sufficient to allow the SPE to finance its activities without relying on financial support from variable interest holders.

Finally, as previously discussed, the Board does not provide any discussion as to what constitutes sufficient equity with regard to distinguishing an entity as an SOE. Without any clarification, it appears that users could draw an analogy to the 10% rule used for the voting interests test. We request that the Board clarify whether or not it is appropriate to use the same 10% guideline to evaluate the equity requirements to qualify as an SOE. However, we remind the Board that we do not believe that a strict 10% rule should be established.

Consolidation Based on Variable Interests

An SPE should be evaluated for consolidation based on variable interests if it is determined that the entity does not meet the voting interest criteria for consolidation. In a variable interest analysis, the enterprise must determine if it provides **significant** financial support to the SPE through a variable interest. Because there is no guidance on what constitutes “significant,” enterprises may have different views on the definition, which could lead to disagreements or inconsistencies in application of the variable interest analysis.

Secondly, the Interpretation implies that the primary criteria for consolidation of an SPE by a variable interest holder is determined by which party holds the “majority” variable interest or “significantly more” than the other variable interest holders. However, in paragraphs 20 and 21, the Interpretation discusses how two variable interest holders with similar variable interests should further evaluate their interests based on risk to determine who should consolidate the SPE. Essentially, it appears that the Interpretation is offering a method to break a tie when neither variable interest holder has an interest that is “significantly more” than the other party. The confusion lies in the fact that the Board acknowledges that two variable interest holders can hold similar variable interests, but still wants one of those parties to be subject to consolidation. This conclusion contradicts the Board’s earlier statement that SPE’s should be consolidated when one variable interest is either the majority or significantly more than the other variable interests. The words similar and significantly more are not interchangeable; however, it appears they are being used as such.

The Interpretation also mentions that, in the case of similar interests, the variable interest holders should risk weight their interests. If a risk based methodology is relevant in this situation, then this should be used as the initial measure in determining which party holds either the majority or significantly more of the variable interest. We believe this approach to be more relevant because a significant variable interest, quantitatively speaking, may not be subject to much risk, and conversely, a smaller variable interest may be subject to an extreme amount of risk. Therefore, we believe that a final Interpretation should require variable interest holders to risk weight their variable interests up front to determine which party should consolidate.

An enterprise involved with an FSPE is considered to provide significant financial support through a variable interest only if it meets at least two of three conditions. One of those conditions is that the enterprise receives a fee that is not market-based. We believe that further explanation is necessary to determine what qualifies as a “market” under the proposed rules. We realize the Board has stated that if a market cannot be demonstrated, then the enterprise will have to presume the fee is **not** market-based; however, it would be helpful to understand what would be acceptable to the Board as demonstration of a market. Also, the Board has implied in the Interpretation that a fee negotiated at arm’s length under competitive conditions qualifies as a market-based fee. We would like the Board to confirm that fees generated from arm’s length transactions between two unrelated parties under competitive conditions can be considered market-based.

Enterprises providing a guarantee that is subordinate to the interest of other parties will automatically meet one criteria in the test to determine if the enterprise is providing significant financial support to an FSPE through a variable interest. The enterprise providing the guarantee may also receive a fee for this service. Do all fees received have to be evaluated against the criteria regarding market-based fees? If so, can the variable interest holders assume that fees provided in conjunction with a guarantee are market-based? If not, it would appear as if the party providing a variable interest in the form of a guarantee cannot qualify for scope exception as an FSPE. Therefore, we believe that the Board should clarify whether one event, such as providing a guarantee, can result in failure of more than one criteria.

Lastly, guarantees were listed in the Interpretation as an example of what may give rise to a variable interest. The Interpretation requires that an enterprise assess fair value of variable interests to determine the majority interest holder, therefore it would be valuable for the Board to provide examples of how users should perform this measurement in instances where fair value is not readily available. We have received many of the comment letters to the Board regarding the Exposure Draft for guarantees, and many of the comment letters expressed concern as to how to value a guarantee.

If the Board does not provide clarification of that issue in a final Interpretation for guarantees, we believe that clarification will be necessary in the final Interpretation related to special-purpose entities.

Continuous Assessment

The criteria for consolidation of an SPE should be considered at each reporting date; therefore, we believe that it would be beneficial for the Board to further define “reporting date.” Was it the Board’s intent for this evaluation to occur monthly, quarterly, or annually? Additionally, the Interpretation is unclear as to whether these assessments are to occur on the variable interest holder’s reporting dates or on the reporting dates of the SPE. This clarification is important because these dates may not always be synonymous.

Further, if the evaluation is to occur based on the reporting dates of the variable interest holders, we believe that the appendix to the final Interpretation should provide an example of a scenario when the variable interest holders have differing fiscal years. Consider a scenario when reporting periods are defined as quarters and one variable interest holder, Enterprise A, has a May 31st year-end and Enterprise B, another variable interest, has a December 31st year-end. Enterprise B performs the variable interest test as of December 31st, and it results in consolidation. However, as of March 31st, Enterprise B is no longer the primary beneficiary because Enterprise A now has the majority of the variable interests. Enterprise B de-consolidates the SPE as of March 31st; however, as of March 31st, Enterprise A is not at the conclusion of a reporting period. Does Enterprise A consolidate the SPE in mid-quarter, or does the SPE remain unconsolidated by both entities until May 31st, when Enterprise A performs its assessment?

The Interpretation also states that, initially, the assets and liabilities of an SPE qualifying for consolidation should be recorded at fair value. However, the Interpretation does not address an important aspect of the subsequent accounting for the SPE. For example, if an SPE qualifies for consolidation in one period and then qualifies for consolidation by another enterprise in a subsequent period, at what value should the SPE be consolidated the second time? By using fair value, as the proposed Interpretation suggests, any positive or negative fluctuations in the values of the SPE's assets and liabilities will not be captured on either enterprises' financial statements. Then, consider a scenario where the original consolidating enterprise again meets all of the criteria in this Interpretation, resulting in another shift of ownership. As previously mentioned, if fair value is used, the income statement impact is still not captured, even by an enterprise that previously had the SPE consolidated in its financial statements.

Thank you for taking our comments into consideration. If you have any questions regarding our comments, please feel free to contact us at any time.

Sincerely,

Jorge Arrieta
Senior Vice President & Controller