



Securities Industry Association

February 18, 2005

Ms. Suzanne Q. Bielstein
Director of Major Projects
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856

File Reference EITF No.04-5 and FSP SOP 78-9-a

Dear Ms. Bielstein:

The Dealer Accounting Committee of the Securities Industry Association¹ ("SIA") is pleased to offer comments on the FASB's proposed FSP SOP 78-9-a, "Interaction of AICPA Statement of Position 78-9, *Accounting for Investments in Real Estate Ventures*," and EITF Issue No. 04-5, "Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights," and the Draft Abstract for EITF Issue No. 04-5 (collectively, the "Proposal"). Although we appreciate the Board's willingness to consider these issues, we are concerned about certain decisions reached in the Proposal.

We believe the Proposal would:

- base consolidation criteria solely on control regardless of whether or not there is a financial interest;
- not reflect the true economics of certain transactions; and
- further exacerbate differences among the various consolidation models that currently exist.

Accordingly, we believe more due process is warranted and we respectfully request the FASB further consider these issues prior to finalizing the Proposal.

¹ The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry employs 790,600 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated \$213 billion in domestic revenue and an estimated \$283 billion in global revenues. (More information about SIA is available at: www.sia.com.)

Consolidation Without a Financial Interest

Current consolidation guidance is based on the existence of a controlling financial interest. In our view, this requires the presence of both a significant financial interest (that is, rights a residual interest holder normally would possess) and control. In contrast, the Proposal would require only control as a consolidation criterion, regardless of whether or not there is a financial interest. We believe this further exacerbates differences among the various consolidation models that currently exist. Therefore, in our opinion, the Proposal should be the subject of more complete due process. If reconciliation of these models will result in unacceptable delay, we would suggest that the Board add a requirement for a financial interest as a consolidation criterion in this Proposal.

Economics Not Reflected in Certain Transactions

Statement of Financial Accounting Concepts No. 1, *Objectives of Financial Reporting*, states, “Financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions.” We agree that where a sole general partner has a significant financial interest in a limited partnership, the Proposal would help to meet this objective. However, where a sole general partner holds only an insignificant (or even no) financial interest in a limited partnership, requiring consolidation would not achieve this objective. Consolidation in such a case would result in financial statements that would include assets to which the General Partner is not entitled, liabilities it will not be obliged to pay, and revenues and expenses that do not accrue to it, together with a substantial -- possibly 100% -- minority interest. We are concerned that the Proposal could result in a portrayal that is not representationally faithful to the underlying economics.

Potential Conflict with EITF Issue 97-2

Paragraph 5 of the Proposed EITF Issue provides that a sole general partner should consolidate a limited partnership “...regardless of the sole general partner’s ownership interest in the limited partnership.” Footnote 3 to that paragraph refers to the “Factors to Consider”, including paragraph 19a, which notes that skepticism about the general partner’s control should increase as its economic interest decreases.

We are concerned that the guidance in paragraph 5 will receive much greater consideration in practice than that in paragraph 19a. This concern is based on both the relative prominence and stronger wording of paragraph 5, which prescribes consolidation, whereas paragraph 19a provides only one of several factors to consider in whether the presumption of control is overcome.

In addition, we note that 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,” requires consolidation only

when an entity has both control and a “significant financial interest” in another entity. The SEC observer noted it is appropriate to apply Issue No. 97-2 to other types of entities with similar arrangements in other industries, and not limit it to Physician Practice Management Entities. “Similar arrangements would include those circumstances where one entity had a controlling financial interest in another through either a nominee structure or other contractual arrangement.” We observe the decision making powers held by a general partner and those held by a Physician Practice Management Entity are both set forth in contractual arrangements, and we see no conceptual basis to treat them differently.

We suggest the Board eliminate the conflict with Issue No. 97-2 by modifying the Proposal to require a “significant financial interest” as a criterion for consolidation. We believe such guidance should be presented with equal prominence as the guidance about “kick-out rights” and “substantive participating rights”, and not as a part of implementation guidance in “Factors to Consider”.

Interaction with Investment Company Audit Guide

Many merchant banking and private equity funds are organized as limited partnerships (with a sole general partner) and account for their activities in accordance with the Investment Company Audit Guide. As the Board is aware, proposed amendments to the scope of the Guide and the retention of investment company accounting in consolidation continue to be considered, and the Guide is expected to be issued soon.

Given the significant overlap of consolidation guidance, we believe coordination is needed among existing rules and those currently under development for consistency in application, and the Proposal should not be finalized until such exercise takes place.

We appreciate the opportunity to comment on the Proposed FSP and EITF Issue. Representatives of the Dealer Accounting Committee of SIA would be pleased to discuss our comments with the Board members or staff. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212-902-5675 or Jerry Quinn, Vice President and Associate General Counsel of SIA, at 212-618-0507.

Sincerely,

Sarah E. Smith
Chair, Dealer Accounting Committee