

*new york state society of*

**NYSSCPA**

*certified public accountants*

530 fifth avenue, new york, ny 10036-5101  
www.nysscpa.org

July 30, 2003

Ms. Suzanne Q. Bielstein  
Director of Major Projects and Technical Activities  
Financial Accounting Standards Board  
401 Merritt 7, PO Box 5116  
Norwalk, CT 06856-5116

By email: [director@fasb.org](mailto:director@fasb.org)

Re: File Reference 1200-001

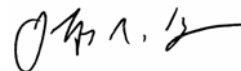
Exposure Draft: Proposed Amendment to FASB Statement 140, *Qualifying Special-Purpose Entities and Isolation of Transferred Assets*

Dear Ms. Bielstein:

The New York State Society of Certified Public Accountants, the oldest state accounting association, represents approximately 30,000 CPAs that will implement the provisions proposed in the captioned exposure draft. NYSSCPA thanks FASB for the opportunity to comment on its exposure draft.

The NYSSCPA Financial Accounting Standards Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with the committee, please contact Robert Dyson, chair of the Financial Accounting Standards Committee, at (212) 842-7565, or Robert Colson, NYSSCPA staff, at (212) 719-8350.

Sincerely,



Jeffrey R. Hoops  
President

Attachment

*new york state society of*

**NYSSCPA**

*certified public accountants*

530 fifth avenue, new york, ny 10036-5101  
www.nysscpa.org

**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON FASB EXPOSURE DRAFT**

**Proposed Amendment to FASB Statement 140, *Qualifying Special-Purpose  
Entities and Isolation of Transferred Assets***

**File Reference No. 1200-001**

**Principal Drafters**

**John McEnerney  
Roseanne Farley  
Lewis Shayne**

**July 30, 2003**

### **NYSSCPA 2003- 2004 Board of Directors**

Jeffrey R. Hoops, <i>President</i>	William Aiken	Neville Grud
John J. Kearney, <i>President-elect</i>	Spencer L. Barback	David W. Henion
Thomas E. Riley, <i>Secretary</i>	Michael G. Baritot	Raymond P. Jones
Arthur Bloom, <i>Treasurer</i>	Rosemarie A. Barnickel	Nancy A. Kirby
Sandra A. Napoleon-Hudson, <i>Vice President</i>	Peter L. Berlant	David J. Moynihan
Steven Rubin, <i>Vice President</i>	Andrew Cohen	Kevin J. O'Connor
Vincent J. Love, <i>Vice President</i>	Ann B. Cohen	Robert S. Peare
Raymond M. Nowicki, <i>Vice President</i>	Michelle A. Cohen	Richard E. Piluso
Louis Grumet, <i>ex officio</i>	Walter Daszkowski	Mark A. Plostock
	Michael J. DePietro	Joseph J. Schlegel
	Katharine K. Doran	Robert E. Sohr
	Barbara S. Dwyer	Robert A. Sypolt
	Robert L. Ecker	Robert N. Waxman
	Mark Ellis	Howard D. Weiner
	David Evangelista	Philip G. Westcott
	Peter H. Frank	Philip Wolitzer
	Jo Ann Golden	

### **NYSSCPA 2003 - 2004 Financial Accounting Standards Committee**

Robert A. Dyson, Chair	Edward P. Ichart	Sherif Saeed
Vincent Allocca	Joseph E. Manfre	Joseph F. Schick
J. Roger Donohue	John J. McEnerney	Lewis Shayne
Roseanne T. Farley	Stephan R. Mueller	Leonard J. Weinstock
Robert Fener	Mark Mycio	Barry Wexler
Hashim Ghadiali	Raymond A. Norton	Eddie C. Wong
Fred R. Goldstein	John J. O'Leary	Margaret A. Wood
Abraham E. Haspel	Steven Rubin	Jay B. Zellin

### **NYSSCPA 2003 - 2004 Accounting & Auditing Oversight Committee**

Robert E. Sohr, Chair	Eugene D. Mahaney	George I. Victor
Gary E. Carpenter	Robert S. Manzella	Paul D. Warner
Robert A. Dyson	Eric J. Rogers	Robert N. Waxman
David J. Hasso	Steven Rubin	Paul J. Wendell
Michele M. Levine	Ira M. Talbi	Margaret A. Wood
Thomas O. Linder		

### **NYSSCPA Staff**

Robert H. Colson

**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**FINANCIAL ACCOUNTING STANDARDS COMMITTEE**

**COMMENTS ON FASB EXPOSURE DRAFT**

Proposed Amendment to FASB Statement 140, Qualifying Special-Purpose Entities and Isolation of Transferred Assets

File Reference 1200-001

While we applaud the FASB's efforts to better reflect economic realities, this exposure draft appears mostly designed to close loopholes highlighted by Interpretation 46. Such an exercise seems at odds with the "principles-based" approach that the FASB has proposed. Further, the number of recent revisions on this issue -- Statement 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, issued in 1996; replaced by Statement 140, of the same name; clarified by Technical Bulletin 01-1, *Amendment to Scope of Statement of Position 95-2, Financial Reporting by Nonpublic Investment Partnerships, to Include Commodity Pools*, and six FASB Staff Positions; and affected by Interpretation 46, Consolidation of Variable Interest Entities -- raises questions about whether the concepts on which these pronouncements are based have inherent flaws that call for reconsideration of the FASB's entire approach.

The overriding principles that should guide the accounting are the consolidation of all entities by the party in ultimate control and the derecognition of corresponding assets only when such control no longer exists. These principles should be communicated in a new comprehensive statement. This necessitates avoiding "safe harbors" such as QSPEs and looking through entities such as "orphaned" SPEs (i.e., owned by a trust rather than by another corporate entity) to determine who, if anyone, actually has control. A new comprehensive statement would also solve the problem noted in paragraph A13 where there are differences in applying Statement 140 and Interpretation 46 to the same SPE.

Using the basic concept of control will require extensive judgment by financial statement preparers, auditors, and regulators, but such judgment is preferable to detailed and frequently-changing rules that may allow substance to be hidden. Making such a new comprehensive standard operational will be a difficult process. Nonetheless, the expected difficulties should not deter the FASB from pursuing the proper path. The FASB should also consider how its approach will compare against the current and future standards of the International Accounting Standards Board, which have been focused on, and are likely to continue to be focused on, the principle of control. Lastly, the FASB should consider whether its approach diverges from the Securities and Exchange

Commission's recently issued study on principles-based accounting in conjunction with the Sarbanes-Oxley Act.

We appreciate the need for the FASB to respond to specific accounting abuses, and we hope this Exposure Draft resolves key issues. However, we believe that under the current standards, additional repairs will have to be made. With that concern in mind, we strongly encourage the FASB to take the comprehensive approach discussed above.