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November 15, 2011

VIA EMAIL TO: director@FASB.org

Technical Director
File Reference No. 2011-190
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update, *Technical Corrections*

To Whom It May Concern:

Our firm, Financial Reporting Advisors, LLC, provides accounting and SEC reporting advisory services, litigation support services, and dispute resolution services. We specialize in applying generally accepted accounting principles to complex business transactions. We appreciate the opportunity to provide comments on the FASB's Proposed Accounting Standards Update, *Technical Corrections* (the ED).

We recommend that the following two corrections be made to the Codification as part of the ED. We have previously suggested these changes through the feedback mechanism in the Codification and believe these two corrections meet the FASB's stated criteria for issues to be addressed in the ED.

Accounting for a Participation Liability Related to a Participating Mortgage

AICPA Statement of Position 97-1, *Accounting for Participating Mortgages* (SOP 97-1), was issued in May of 1997 and established the borrower's accounting for a participating mortgage loan if the lender is entitled to participate in the appreciation in the value of the mortgaged real estate project, the results of operations of the mortgaged real estate project, or both. This guidance is included in the Codification in Subtopic 470-30, *Debt-Participating Mortgage Loans*. However, we believe the guidance related to the borrower's accounting for a participation liability related to the results of operations of a real estate project was incorrectly changed when the guidance was incorporated into the Codification.

Specifically, the guidance in paragraph 470-30-35-4 states:

Amounts due to a lender pursuant to the lender's participation in the real estate project's results of operations (as defined in the participating mortgage loan agreement) shall be charged to interest expense in the borrower's corresponding financial reporting period, with a corresponding credit to the participation liability. At the end of each reporting period both of the following are required:

- a. The balance of the participation liability shall be adjusted to equal the current fair value of the participation feature.
- b. The corresponding debit or credit shall be recorded in the related debt-discount account.

Pursuant to paragraph 15 of SOP 97-1, a participation liability related to an appreciation in the value of a mortgaged real estate project is adjusted each period to fair value. However, paragraph 13 of SOP 97-1 states, "amounts due to a lender pursuant to the lender's participation in the real estate project's results of operations (as defined in the participating mortgage loan agreement) should be charged to interest expense in the borrower's corresponding financial reporting period, with a corresponding credit to the participation liability." In other words, the accounting for a participation liability related to sharing in results of operations or cash flow is not based on a fair value model and the participation liability is not adjusted each period to fair value. The AICPA Accounting Standards Executive Committee (AcSEC) made a conscious decision to not use a fair value model for a participation liability related to the operations of a mortgaged real estate project. Paragraph 25 in the Basis for Conclusions section of SOP 97-1 states:

Although AcSEC notes that a participation in the operations of a mortgaged property can be valued similarly [to a participation in the appreciation in value of a mortgaged real estate project], AcSEC believes that the cost of monitoring and updating the information needed to record and review the ongoing estimate of such a liability would exceed the benefits to be gained by reporting the liability. Consequently, AcSEC concluded that amounts due to a lender pursuant to a participation in operations of the mortgaged real estate should be included in interest expense in the borrower's corresponding financial reporting period.

We recommend that the guidance in paragraph 470-30-35-4 be corrected to be consistent with the guidance contained in SOP 97-1.

Allocation of Consolidated Tax Expense to an Acquired Entity after an Acquisition

FASB Statement No. 109, *Accounting for Income Taxes*, was issued in February 1992 and became effective for fiscal years beginning after December 15, 1992. Statement 109 established, for the first time, guidance on allocating a consolidated tax provision to members of the consolidated tax group. The guidance on allocating the consolidated tax provision to the separate financial statements of members of the consolidated tax group is contained in paragraphs 740-10-30-27 to 30-28 of the Codification. In July 1994, the Emerging Issues Task Force (EITF) issued Issue No. 94-10, *Accounting by a Company for the Income Tax Effects of Transactions among or with Its Shareholders under FASB Statement No. 109*. This guidance is contained in paragraph 740-20-45-11(g) of the Codification.

However, the Codification also contains guidance that is contrary to the above referenced guidance on allocation of the consolidated tax provision among members of the consolidated tax group. Paragraph 805-740-25-13 states:

If there is a continuation of the historical basis for financial reporting at the same time as there is a tax basis step-up, any one of the following three methods is acceptable for allocating the consolidated tax provision, with appropriate disclosure:

- a. Modify the intra-entity tax allocation agreement so that taxes are allocated to the acquired entity on the preacquisition tax basis
- b. Credit the tax benefit from the tax basis step-up to the acquired entity's additional paid-in capital when realized
- c. Credit the tax benefit to income of the acquired entity as a permanent difference when realized.

The guidance in paragraph 805-740-25-13 comes from EITF Issue No. 86-9, *IRC Section 338 and Push-Down Accounting*. Issue 86-9 was issued in March of 1986. Issue 86-9 was developed when accounting for income taxes followed the deferred method, as provided in APB Opinion No. 11, *Accounting for Income Taxes*. In our view, none of the three methods described in paragraph 805-740-25-13 are consistent with the requirements of 740-10-30-27 to 30-28. Those paragraphs require "the method adopted ... shall be systematic, rational, and consistent with the broad principles established by this Subtopic." Further, paragraph 740-10-30-28 states, "A method that allocates deferred taxes to a member of the group using a method fundamentally different from the asset and liability method described in this Subtopic (for example, the deferred method that was used before 1989) ... [is] not consistent with the broad principles established by this Subtopic." Under Opinion 11 it was acceptable to allocate income taxes among members of a consolidated tax group based on an intra-entity tax allocation agreement. However, the intra-entity tax allocation agreement is not an acceptable basis for allocation of income taxes among members of the consolidated tax group under Topic 740. Methods b and c above ignore the existence of temporary differences. Again, paragraph 740-10-30-28 specifically precludes the use of such methods. Finally, Issue 94-10 (subparagraph 740-20-45-11(g)) addressed this exact issue in the context of Statement 109 (Topic 740) and provides guidance on the treatment of the deferred taxes created in this situation—guidance that cannot be reconciled to the guidance in paragraph 805-740-25-13.

Prior to the Codification becoming authoritative, the contradiction between Statement 109 and Issue 86-9 could be resolved through application of the GAAP hierarchy—the guidance in Statement 109 took precedence over the guidance in Issue 86-9. However, once the guidance from Statement 109 and Issue 86-9 was codified, there is simply a conflict in the literature with arguably no resolution.

We recommend that paragraph 805-740-25-13 be deleted from the Codification.

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Once again we appreciate the opportunity to comment on the ED. If there are any questions, please contact Richard R. Petersen at 312-345-9102.

Sincerely,

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