Steven K. Hazen
149 South Barrington Avenue, #245
Los Angeles, CA 90049-3310

November 12, 2008

VIA EMAIL: RULE-COMMENTS@SEC.GOV

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

re File Number 4-573
Study of Mark to Market Accounting

Dear Ms. Harmon:

I appreciate this opportunity to provide suggestions regarding the study to be conducted by the Securities and Exchange Commission (the "SEC") under the Emergency Economic Stabilization Act of 2008 (the "Act") of "mark-to-market" accounting applicable to financial institutions, including depository institutions. These suggestions are provided pursuant to SEC Release Nos. 33-8975 and 34-58747 and focus on the following issues identified in Section 133(a) of the Act:

(3) the impact of such standards on the quality of financial information available to investors, and

(4) the process used by the Financial Accounting Standards Board ("FASB") in developing accounting standards.

For purpose of this comment letter, I take those items in reverse order. I note at the outset that my suggestions regarding those issues have applicability beyond just financial institutions (including depositary institutions), but the generic nature of them do not diminish the significant impact they have on such institutions.

1 The Process

One very glaring deficiency in the process used by FASB in developing accounting standards either is an oversight in taking into consideration legal principles that will impact on (and perhaps govern) relationships and rights reflected in financial statements or is an intentional disregard of them. By way of example, FIN 45 regarding accounting for guarantees is at best completely disconnected from the result that would prevail when courts apply statutory and common law obligations of guarantors. FIN 46 (both as adopted and as revised, and as currently proposed to be revised) regarding consolidation of "variable interest entities" results in consolidation for financial statement purposes that is contrary to well-established case law regarding consolidation in bankruptcy proceedings of assets held by separate entities when one of them becomes insolvent.

The problems that result when accounting principles are developed without proper recognition of legal principles that would control in judicial proceedings was specifically brought to the attention of FASB when it was considering FIN 46, as demonstrated in the attached comment letter (#78A, dated September 26, 2002). Issues set forth in that letter were raised in my individual capacity. The Corporations Committee of the State Bar of California Business Law Section did, however, submit its own letter (# 138, dated October 25, 2002, a copy of which is also attached) urging FASB to give cognizance to the issues raised in mine. On its face, FIN 46 as initially adopted (and as revised and as proposed to be revised) gives no consideration at all to legal principles in conflict with the accounting principles set forth in it.

FASB does deserve credit for routinely implementing "due process" steps when it considers new accounting principles or changes to existing ones: (1) public notice, (2) opportunity for public comment, and (3) a modified version of public hearings taking the form of public roundtable discussions. But there is no point in going through the motions if the deliberative process actually reflects the results of those public procedures. Too often, the outcome of FASB procedures regarding the nexus of legal principles with accounting principles are evocative of the old saw from the days of the Commissars: "They pretend to pay us, and we pretend to work." FASB's process needs to enhance the substance of its work, not just the cosmetics of it. When it comes to the impact of legal principles on how obligations and relationships are properly accounted for, the record does not reflect that occurring.

2 <u>The Quality of Financial Information</u>

Development of accounting standards cannot occur in a vacuum. It has no meaningful relevance if it does not contribute to full and fair disclosure upon which recipients of financial statements based on such principles can make an informed investment decision or upon which creditors can make an informed decision as to whether to extend credit or forbearance in connection with existing credit.

FIN 46 presents a particularly relevant case study in this context. Whatever a "variable interest entity" ("VIE") is, it has no cognizance under the law. Determination of parties that are deemed to be the "primary beneficiary" of a VIE has no relevance under the law as to whether the assets of the VIE can be used to satisfy debts of the "primary beneficiary." But application of FIN 46(R) can result in financial statement misleading users of them to believe that they can. This results in the irresolvable conflict of financial statements including a presentation that the reporting company has to disclose to be inaccurate or misleading. An example of that is shown in the attached extracts from a Quarterly Report on Form 10-Q that referenced FIN 46.

This issue is inextricably linked with the prior one: if accounting principles fail to reflect the reality that well-established legal principle will be applied when the rubber meets the road, financial statements based on such principles will either be misleading or will be confusing when (as in the above-referenced Quarterly Report) the reporting company has to disclaim the appearance created by them. In that sense, the failure of procedures followed by FASB in developing or revising accounting principles to give appropriate effect to legal principles immutably diminishes the quality of financial statements prepared on the basis of such accounting principles.

3 Suggestions

In capsule form, I respectfully urge the SEC and its staff to include detailed examination of the following when preparing the study mandated by the Act:

- Whether the FASB process of developing accounting principles adequately reflects the reality of how relationships and obligations reflected on financial statements would be adjudicated under existing legal principles.
- Whether failure of accounting principles to reflect legal principles diminishes the utility of financial statements based on such principles.
- What happens when financial statements are false or misleading when the comply with satisfying generally accepted accounting principles.

While the study will undoubtedly cover topics and issues that are more specific to financial institutions,[1] it will be significantly more meaningful to the purpose mandated by the Act if it directly addresses fundamental underlying issues such as those identified in this letter.

Very truly yours,

/s/

Steven K. Hazen

Attachments

cc: Mr. Robert H. Herz
Chairman, Financial Accounting Standards Board
P.O. Box 5116
Norwalk, Connecticut 06856-5116

1 As it happens, issues arising under FIN 45 and FIN 46 have had particular impact on financial institutions.

Letter of Comment No: 78A
File Reference: 1082-200
Date Received: 10/01/02

Steven K. Hazen, Esq.
Suite 2700
777 South Figueroa Street
Los Angeles, CA 90017
(213) 689-1300
SKHazen@KelleyDrye.com

September 26, 2002

VIA E-MAIL: director@fasb.org

Signed Copy by FAX

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

File Reference No. 1082-200

Re: Observations on Comments to the Exposure Draft regarding Consolidation of Certain Special-Purpose Entities; Nexus of Accounting and Legal Issues

Dear Ms. Bielstein:

As you may be aware, I submitted a comment letter on the above-referenced Exposure Draft which was logged by your office as Letter of Comment No. 78. I am also shown as a signatory to Letter of Comment No. 15. In the context of the former, I will be participating in the morning session of the Open Roundtable being conducted on Monday, September 30, 2002. I am looking forward to that and hope to have an opportunity to meet you and/or Len Tatore who has been my contact with the FASB on this matter.

In anticipation of the invitation to participate (which I requested) and then in preparation for that event, I have obtained and reviewed the Letters of Comment through that numbered 134. Having done so, I am struck by the following: (1) the rather large number of written comments submitted, (2) the range of issues covered by them, and (3) the paucity of comment on issues which arise where accounting concepts and legal issues overlap or intersect. I might also note the potential conflict among various positions taken in the Letters of Comment but that is beyond the scope of this letter. Indeed, it is limited to item (3).

As you are aware, years of friction between the legal and accounting disciplines in a similar context ultimately resulted in what amounted to a "treaty" between the American Bar Association and the American Institute of Certified Public Accountants with respect to responses to audit inquiries. There is more than a theoretical risk that accounting provisions similarly arising in the interstices of the disciplines with respect to matters covered in the Exposure Draft without adequate recognition of the significant differences between them would simply start another long period of uncertainty and even tension between the two disciplines. As indicated by the breadth of issues identified in this letter, there is potential for much greater dissonance in this instance than there was with respect to audit inquiries and almost certainly a far more challenging set of analyses required for their resolution.

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In that context and in advance of the Roundtable, I would like to bring to your attention certain legal issues which do not appear to have been addressed directly in the Letters of Comment. Those are summarily described in this letter, but the listing of them should not by any means be considered exhaustive.

1. "Equity in Legal Form"

It appears that the Exposure Draft has abandoned the concept of "equity in legal form" although various of the comment letters either assume that it remains intact or postulate that it should. The problem is that the state laws governing formation of legal entities do not generally use the concept of "equity" in statutory provisions or even case law relating to the formation of any such entity. As a result, it is quite difficult and in come cases would be impossible for a lawyer to render an opinion that a recognized component of the "capital" of a legal entity would constitute "equity". Many states do have statutes regarding conversion between legal entities of differing form which actually use the term "equity" and apply it in a fashion that is relatively predictable. Nonetheless, it is my experience in transactions which have been subject to EITF 96-21 that uncertainty and even confusion are inevitably generated by use of the phrase "equity interest in legal form."

If that phrase or the concept contained within it is brought back into the Interpretation before final adoption, or if EITF 96-21 (and particularly Question No. 8 thereof and the response thereto) is not actually nullified as indicated in Section C2, paragraph a, of Appendix C to the Exposure Draft, this would be an appropriate point for the FASB to address that problem. It might actually be resolved by clarification that the condition is met when an element of "capital" satisfying the category of "equity" for accounting purposes is evidenced by an interest separately recognized under state laws governing the formation of the legal entity involved, and/or the organic instruments (specified and authorized thereby) which evidence formation, as being subordinate to all indebtness and similar obligations of the legal entity. In all likelihood, that rather complicated and even tortured explanation of the use of the phrase "equity interest in legal form" is actually what should have been intended (and maybe even was) when EITF 96-21 was promulgated. Unfortunately, it is not at all clear as to what concept in that phrase the term "legal" is being applied and what is being tested against that standard: the "equity" status of that interest or the form which evidences it.

2. "De facto Agency Relationship"

One of the Letters of Comment[1] states that the notion of a "de facto agency relationship" as used in the Exposure Draft is new. Principles of agency relationship, including what establishes it and the responsibilities that flow from it, are the result of literally centuries of judicial case law and statutory responses thereto. As a fundamental matter, the entire notion of "de facto agency relationship" as used in the Exposure Draft is completely <u>outside</u> of that legal structure. While that term may be useful for theoretical analysis of accounting issues, it would be a significant mistake to assume automatically that disputes as to the meaning and implications of it would result in judicial proceedings upholding the notion as utilized in the Exposure Draft.

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1 No. 124, submitted by Ernst & Young.

3. **Securities Laws**

Various of the Letters of Comment have noted the realistic possibility that the Exposure Draft as written would require consolidation of an SPE even if that were to result in a false or misleading presentation as to the financial condition and results of operation of the entity thus required to consolidate it.[2] Unless the FASB can sort through the implications of that under various securities laws or provide guidance in the final Interpretation as to how the impacted parties and their advisers sort through them, the Interpretation would either merely create liability where none logically existed previously or force business enterprises to forego perfectly legal forms of transactions in order to avoid having to resolve inherent conflicts. Among other things, that would have to address such liabilities as those arising under Sections 11, 12 and 17 of the Securities Act of 1933, as amended; those arising under Section 10(b) of the Securities Exchange Act of 1934, as amended, including regulations adopted pursuant thereto; those arising under Section 313 of the Trust Indenture Act of 1939, as amended; those arising under Sections 18, 19, 48 and 61 of the Investment Company Act of 1940, as amended; those arising under previously well-established state securities laws; and those arising under more recent state law provisions relating to preparation of financial statements, many of those adopted in reaction to the press reports and public perceptions regarding recent "accounting scandals."

4. **Insolvency Law**

Various of the Letters of Comment have made reference to the "bankruptcy remote" status of certain SPEs that are utilized for financing transactions, including those in which such status is critical to a credit rating of debt securities utilized in the transaction.[3] Some of those have suggested that such status on its own is evidence that such SPEs would not logically be consolidated by any party or should not be. I might not disagree with that, but the focus of this letter is simply to note that there is an overlap between "consolidation" for financial reporting purposes and "substantive consolidation" for purposes of a long line of insolvency cases.[4] When that status is key to a credit rating of debt instruments, it is not unusual for the credit rating agency to require delivery of a legal opinion as to non-consolidation for purposes of insolvency. That is not an easy opinion to give and requires detailed examination of the facts surrounding the free-standing nature of the SPE.

Has the FASB addressed the issue of whether the proposed Interpretation would have an inconsistent application as between the concept of consolidation for financial reporting purposes and the concept of substantive consolidation? Has the FASB considered the possibility that application of the Exposure Draft in its current form could create an impression with creditors that they have access to assets which they otherwise did not and, as a result, risk the possibility that such assets would ultimately be subjected to "substantive consolidation" in

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2 *See*, for example, Nos. 25, 42, 90 & 127, as well as the attachment to Letter of Comment No. 46 which is also attached to several other Letters of Comment.

3 *See*, for example, Nos. 88 and 134. In passing, it seems curious that an entity constructed so rigorously as to possess that characteristic could ever be characterized as a "strawman" although that does seem to occur.

4 See, Fish v. East, 114 F.2d 177 (10th Cir. 1940). The fundamentals articulated in that case continue to be cited as authoritative in this area, although it is important to note that refinements continue to be made. One very visible instance of that occurred in the Drexel Burnham situation. *See*, In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723 (Bankr. S.D.N.Y 1992).

Via E-Mail
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insolvency proceedings to the detriment of investors otherwise reasonably relying on the "bankruptcy remote" status of the SPE?

5. Sarbanes-Oxley

The Sarbanes-Oxley Act of 2002 was adopted in direct response to various highly visible instances of apparent wrong-doing in the corporate and accounting world. At least one very visible instance of that highlighted the use of SPEs. Under the Sarbanes-Oxley Act, the SEC is obligated to issue final rules by not later than January 26, 2003, regarding disclosure of off-balance sheet financing transactions, arrangements and obligations, as well as other relationships with unconsolidated entities which have a material current or future impact on the financial status of reporting companies. In this context, it is clear that an approach by the FASB which highlighted disclosure would be in harmony with the law and with initiatives by the SEC. It is not at all clear that an approach based instead on consolidation would also be in harmony and there is more than a theoretical risk that it would not be.

In addition, the Sarbanes-Oxley Act requires the SEC to conduct a study of filings by reporting companies to examine certain aspects of SPEs, including whether the application of GAAP results in meaningful reflection of off-balance transactions in a manner which is readily transparent to investors. The provision specifically requires that the study examine whether GAAP requires consolidation of such SPEs in appropriate circumstances.

Has the FASB considered whether it should at this time move in a different direction from that of the SEC or instead simply provide at this time specific guidance as to disclosure and then coordinate with the SEC on the initiatives in this area mandated by Sarbanes-Oxley?

6. Lender Liability

The Exposure Draft might be read to require that an institution which makes a loan to an SPE could be obligated to consolidate the assets and liabilities of that SPE in its own financial statements. Has the FASB considered the impact that could have on further expanding legal principles of "lender liability" -- either as a refinement of existing principles or development of an entirely new category based solely on such consolidation?

7. Breach of Contract / Covenant Defaults

Changes to accounting principles do not occur in a vacuum. Lenders and borrowers (as well as parties to other analogous financing transactions) routinely reach finely negotiated positions of debt coverage ratios and the like which depend for their assessment on reference to GAAP financial statements. Without any act by either party, one of them could find itself in a legally definitive position of breach of contract by virtue of covenant defaults or (at the other end of the spectrum) could find itself substantially less protected in its position than had otherwise been the basis of concluding a transaction. When that shift occurs, so does the relative negotiating positions. Has the FASB considered whether that result was intended for the proposed Interpretation? Has the FASB considered the legal and economic implications of that result?

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8. State Law Formation/Organization Laws

State law can permit a business entity to have invested capital interests (which concept presumably covers that accounting concept of "equity") which have "... repayment provisions that are similar to the provisions of debt obligations or otherwise limit the holder to a rate of return commensurate with the risk in debt instruments."[5] That could readily occur with respect to preferred stock, LLC membership interests, limited partnership rights, and even shareholder rights in close corporations. The FASB's determination that such characteristics would cause an SPE not to meet the exception conditions of Paragraph 9 should be examined as to whether the FASB intends to supplant functions regarding formation and organization of legal entities or if the stated position of the FASB could force a legal entity to forfeit protections otherwise assured to it (and to its investors and creditors) under state law.

9. State Law Dividend Restrictions

In many states, debt-coverage ratios and similar financial standards of capital adequacy which govern the ability of corporations or other legal entities to declare dividends or otherwise make distributions to its capital investors are based on financial statements prepared in accordance with GAAP. If the proposed Interpretation is adopted, legal entities into which investors put their money in reliance on continued dividend/distribution policies could suddenly be prevented from doing so. Has the impact of that on investor confidence in the accounting system been considered in the proposed Interpretation? Has the FASB taken into consideration state law implications on the personal liability of directors who authorize dividends based on currently existing standards when those cease to be applicable? This issue raises the specter that decisions made by Directors would subsequently be subject to a different standard of review if an SPE with which the enterprise had completed financing transactions were to go through seriatim iterations of consolidation and deconsolidation.

I hope that the foregoing is of some interest. Given the time it has taken to work my way through the Letters of Comment and then prepare this letter, it is reasonable to assume that the problems of accounting/legal interstices generally are not likely to be included in the discussions at the Roundtable, much less the specific issues referenced in this letter. The list of issues circulated Wednesday morning by Mr. Tatore do not readily lend themselves to that discussion and, although his cover message indicates that other issues may be raised if time permits, it seems relatively likely that ones of a more technical nature (and thus narrowly focused on accounting principles, irrespective of implications beyond that discipline) are more likely to receive attention of the participants. As and to the extent I can inject those briefly into the dialogue, I will hope to have the opportunity to do so.

5 See Appendix, A2. i. of the Exposure Draft, page 11.

Via E-Mail
Signed Copy by FAX

In any event, I would hope that member of the Board can be made aware in one manner or another that deliberations and then interpretations in this area do have an impact on the overlap of issues as between the legal and accounting disciplines. In its current form, the Exposure Draft does not appear to reflect that.

Very truly yours,

/s/

Steven K. Hazen

cc: Mr. Len Tatore via E-Mail: lrtatore@fasb.org

THE STATE BAR
OF CALIFORNIA

OFFICE OF GOVERNMENTAL AFFAIRS

1201 'K' STREET, SUITE 720, SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 442-8018, FAX: (916) 442-6916

October 25, 2002

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

Letter of Comment No: 138
File Reference: 1082-200
Date Received: 10/29/02

Re: Observations on Comments to the Exposure Draft regarding Consolidation of Certain Special-Purpose Entities; Nexus of Accounting and Legal Issues

Dear Ms. Bielstein:

The Corporations Committee of the Business Law Section of the State Bar of California, composed of attorneys regularly advising California Corporations and out-of state corporations transacting business in California is submitting the enclosed comments on Special Purpose Entities.

This position is only that of the Corporations Committee of the BUSINESS LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the BUSINESS LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

Sincerely,

Terry J. Miller

cc: Keith Bishop, Co-Chair, Corporations Committee
Bruce Dravis, Co-Chair, Corporations Committee
Jerry Grossman, Legislative Chair, Business Law Section
Nancy Zamora, Chair, Board Committee on Stakeholder Relations
Larry Doyle, Chief Legislative Counsel, State Bar of California
Rick Zanassi, Office of General Counsel, State Bar of California

BUSINESS LAW SECTION

THE STATE BAR OF CALIFORNIA

October 24, 2002

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

Re: Exposure Draft Regarding Consolidation of Certain Special Purpose Entities (the "Exposure Draft")

File Reference No. 1082-5116

Ladies/Gentlemen:

The Corporations Committee of the Business Law Section of the State Bar of California, composed of attorneys regularly advising California corporations and out-of-state corporations transacting business in California, is writing with respect to the Exposure Draft.

Steve Hazen by letter dated September 26, 2002 to Ms. Suzanne Bielstein identified a number of important legal issues with respect to the Exposure Draft.[1] The Corporations Committee has now had the opportunity to review and discuss Mr. Hazen's letter. We are writing to urge that the Financial Accounting Standards Board carefully consider and take into account the legal issues raised by Mr. Hazen. The Corporations Committee believes that failure to take these and other potential legal issues into account could have a number of unintended consequences, including those described in Mr. Hazen's letter. The Corporations Committee is willing to offer its assistance in addressing the potential legal impacts of the adoption of the Exposure Draft.

This position is only that of the CORPORATIONS COMMITTEE of the BUSINESS LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.

[1] Although Mr. Hazen is a member of the Corporations Committee, his letter was not sent on behalf of the Corporations Committee.

180 Howard Street, San Francisco, CA 94105-1639 • 415-538-2570 • Fax 415-538-2368
• www.calbar.org/2sec/3bus/2busndx.htm

Membership in the BUSINESS LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

Very truly yours,

Keith Paul Bishop
Co-Chair, Corporations Committee

Bruce Dravis
Co-Chair, Corporations Committee

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D. C. 20549

FORM 10Q

(Mark One)
[X] Quarterly report under Section 13 or 15 (d) of the
Securities Exchange Act of 1934

For quarterly period ended APRIL 30, 2003 or

[   ] Transition report pursuant to Section 13 or 15 (d) of the
Securities Exchange Act of 1934

Commission file number 1-8551

Hovnanian Enterprises, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	22-1851059
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

10 Highway 35, P.O. Box 500, Red Bank, N. J. 07701
(Address of Principal Executive Offices)

732-747-7800
(Registrant's Telephone Number, Including Area Code)
Same
(Former Name, Former Address and Former Fiscal Year, if Changed
Since Last Report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [ ]

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes [X]   No [   ]

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. 22,509,277 Class A Common Shares and 7,434,844 Class B Common Shares were outstanding as of May 30, 2003.

HOVNANIAN ENTERPRISES, INC.

FORM 10Q

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(a)

Exhibit 3(a) Certificate of Incorporation of the Registrant. (1)

Exhibit 3(b) Certificate of Amendment of Incorporation of the Registrant. (2)

Exhibit 3(c) Bylaws of the Registrant. (2)

Exhibit 10(a) Amended and Restated Credit Agreement dated February 20, 2003. (3)

Exhibit 10(b) Restated $142 million K. Hovnanian Mortgage, Inc. Revolving Credit Agreement dated March 7, 2003. (3)

Exhibit 99(a) Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Exhibit 99(b) Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(1) Incorporated by reference to Exhibits to Registration Statement (No. 2-85198) on Form S-1 of the Registrant.

(2) Incorporated by reference to Exhibits to Annual Report on Form 10-K for the year ended

February 28, 1994 of the Registrant.

(3) Incorporated by reference to Exhibits to
Quarterly Report on Form 10-Q for the quarter
Ended January 31, 2003 of the Registrant.

(b) No reports on Form 8-K have been filed during
The quarter for which this report is filed.

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HOVNANIAN ENTERPRISES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - UNAUDITED

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10. Recent Accounting Pronouncements - In April 2002, the Financial Accounting Standards Board issued (SFAS) No. 145, "Reporting Gains and Losses from Extinguishment of Debt", which rescinded SFAS No. 4, No. 44, and No. 64 and amended SFAS No. 13. The new standard addresses the income statement classification of gains or losses from the extinguishment of debt and criteria for classification as extraordinary items. We adopted SFAS No. 145 on November 1, 2002. We reclassified $0.9 million extraordinary loss from extinguishment of debt to other operations and ($0.3) million to State and Federal Income Taxes on our Consolidated Statements of Income to conform to the new presentation.

In June 2002, the Financial Accounting Standards Board issued (SFAS) No. 146, "Accounting for Costs Associated with Exit or Disposal Activities". SFAS No. 146 addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies Emerging Issues Task Force ("EITF") Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including certain costs incurred in a restructuring)". SFAS No. 146 requires recognition of a liability for a cost associated with an exit or disposal activity when the liability is incurred as opposed to when the entity commits to an exit plan as prescribed under EITF No. 94-3. SFAS No. 146 is effective for exit or disposal activities initiated after December 31, 2002. We adopted SFAS No. 146 January 1, 2003. The initial adoption of SFAS No. 146 did not have an effect on the financial position or results of operations of our Company. However, SFAS No. 146 could impact the amount or timing of liabilities to be recognized in the event that we engage in exit or disposal activities in the future.

In November 2002, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"). FIN 45 elaborates on the existing disclosure requirements for most guarantees, including loan guarantees such as standby letters of credit. It also clarifies that at the time a company issues a guarantee, the company must recognize an initial liability for the fair value, or market value, of the obligations it assumes under the guarantee and must disclose that information in its interim and annual financial statements. The provisions related to recognizing a liability at inception of the guarantee for the fair value of the guarantor's obligations does not apply to product warranties. The initial recognition and initial measurement provisions apply on a prospective basis to guarantees issued or modified after December 31, 2002. The adoption of the initial recognition and initial measurement provisions of FIN 45 did not have a material effect on our financial position or results of operations. Our disclosure of guarantees is included in Note 13 to the financial statements.

In December 2002, the Financial Accounting Standards Board issued (SFAS) No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure", which amends (SFAS) No. 123. The new standard provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. It also requires prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the affect of the method used on reported results. We have not elected to change to the fair value based method of accounting for stock-based employee compensation. We adopted the disclosure provisions of SFAS No. 148 in our second fiscal quarter ending April 30, 2003. Our disclosure of accounting for stock-based compensation is included in Note 2 to the financial statements.

In January 2003, the Financial Accounting Standards Board issued FASB Interpretation No. 46 "Consolidation of Variable Interest Entities" an interpretation of ARB No. 51 ("FIN 46"). A Variable Interest Entity ("VIE") is created when (i) the equity investment at risk is not sufficient to permit the entity from financing its activities without additional subordinated financial support from other parties or (ii) equity holders either (a) lack direct or indirect ability to make decisions about the entity, (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur. If an entity is deemed to be a VIE, pursuant to FIN 46, an enterprise that absorbs a majority of the expected losses of the VIE is considered the primary beneficiary and must consolidate the VIE. FIN 46 is effective immediately for VIE's created after January 31, 2003. For VIE's created before January 31, 2003, FIN 46 must be applied at the beginning of the first interim or annual reporting period beginning after June 15, 2003.

Based on the provisions of FIN 46, we have concluded that whenever we option land or lots from an entity and pay a non-refundable deposit, a VIE is created under condition (ii) (b) of the previous paragraph. We have been deemed to have provided subordinated financial support, which refers to variable interests that will absorb some or all of an entity's expected theoretical losses if they occur. For each VIE created we will compute expected losses and residual returns based on the probability of future cash flows as outlined in FIN 46. If we are deemed to be the primary beneficiary of the VIE we will consolidate it on our balance sheet. The fair value of the VIE's inventory will be reported as "Consolidated Inventory Not Owned - Variable Interest Entities".

Management believes FIN 46 was not clearly thought out for application in the homebuilding industry for land and lot options. Under FIN 46, we can have an option and put down a small deposit as a percentage of the purchase price and still have to consolidate the entity. Our exposure to loss as a result of our involvement with the VIE is only the deposit, not it's total assets consolidated on the balance sheet. In certain cases we will have to place inventory on our balance sheet the VIE has optioned to other developers. In addition, if the VIE has creditors, it's debt will be placed on our balance sheet even though the creditors have no recourse against our Company. Based on these observations we believe consolidating VIE's based on land and lot option deposits does not reflect the economic realities or risks of owning and developing land.

At April 30, 2003 we consolidated three VIE's created from February 1, 2003 to April 30, 2003 as a result of our option to purchase land or lots from the selling entities. We paid cash or issued letters of credit deposits to these three VIE's totaling $6.7 million. Our option deposits represent our maximum exposure to loss. The fair value of the property owned by the VIE's was $40.9 million of which $6.2 million was not optioned to our Company. Since we could not get the selling entities to provide us with any financial information, the fair value of the optioned property less our cash deposits, which totaled $35.8 million, was reported on the balance sheet as Minority Interest. Creditors, if any, of these VIE's have no recourse against our Company.

We will continue to secure land and lots using options. Including the deposits with the three VIE's above, at April 30, 2003 we have total cash and letters of credit deposits amounting to approximately $175.7 million to purchase land and lots with a total purchase price of $2.2 billion. Not all our deposits are with VIE's. The maximum exposure to loss is limited to the deposits although some deposits are refundable at our request or refundable if certain conditions are not met. We are in the process of evaluating all option purchase agreements in effect as of January 31, 2003. Options with VIE's where we are the primary beneficiary will be consolidated by our fiscal year end October 31, 2003.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

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RESULTS OF OPERATIONS FOR THE THREE AND SIX MONTHS ENDED APRIL 30, 2003 COMPARED TO THE THREE AND SIX MONTHS ENDED APRIL 30, 2002

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Recent Accounting Pronouncements

In April 2002, the Financial Accounting Standards Board issued (SFAS) No. 145, "Reporting Gains and Losses from Extinguishment of Debt", which rescinded SFAS No. 4, No. 44, and No. 64 and amended SFAS No. 13. The new standard addresses the income statement classification of gains or losses from the extinguishment of debt and criteria for classification as extraordinary items. We adopted SFAS No. 145 on November 1, 2002. We reclassified $0.9 million extraordinary loss from extinguishment of debt to other operations and ($0.3) million to state and Federal Income Taxes on our Consolidated Statements of Income to conform to the new presentation.

In June 2002, the Financial Accounting Standards Board issued (SFAS) No. 146, "Accounting for Costs Associated with Exit or Disposal Activities". SFAS No. 146 addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies Emerging Issues Task Force ("EITF") Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including certain costs incurred in a restructuring)". SFAS No. 146 requires recognition of a liability for a cost associated with an exit or disposal activity when the liability is incurred as opposed to when the entity commits to an exit plan as prescribed under EITF No. 94-3. SFAS No. 146 is effective for exit or disposal activities initiated after December 31, 2002. We adopted SFAS No. 146 January 1, 2003. The initial adoption of SFAS No. 146 did not have an effect on the financial position or results of operations of our Company. However, SFAS No. 146 could impact the amount or timing of liabilities to be recognized in the event that we engage in exit or disposal activities in the future.

In November 2002, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"). FIN 45 elaborates on the existing disclosure requirements for most guarantees, including loan guarantees such as standby letters of credit. It also clarifies that at the time a company issues a guarantee, the company must recognize an initial liability for the fair value, or market value, of the obligations it assumes under the guarantee and must disclose that information in its interim and annual financial statements. The provisions related to recognizing a liability at inception of the guarantee for the fair value of the guarantor's obligations does not apply to product warranties. The initial recognition and initial measurement provisions apply on a prospective basis to guarantees issued or modified after December 31, 2002. The adoption of the initial recognition and initial measurement provisions of FIN 45 did not have a material effect on our financial position or results of operations. Our disclosure of guarantees is included in Note 13 to the financial statements.

In December 2002, the Financial Accounting Standards Board issued (SFAS) No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure", which amends (SFAS) No. 123. The new standard provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. It also requires prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the affect of the method used on reported results. We have not elected to change to the fair value based method of accounting for stock-based employee compensation. We adopted the disclosure provisions of SFAS No. 148 in our second fiscal quarter ending April 30, 2003. Our disclosure of accounting for stock-based compensation is included in Note 2 to the financial statements.

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