Letter of Comment No: 18
File Reference: FSPAAGINVA

Date Received:

Gartmore Morley
Financial Services, Inc.
5665 SW Meadows Road
Suite 400
Lake Oswego, OR 97035
Phone 503 620 7899
Toll Free 800 548 4806
www.gartmoremorley.com

Mr. Lawrence W. Smith
Director - Technical Application & Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116



Re: Proposed FASB Staff Position No. AAG INV-a, Reporting of Fully Benefit Responsive Investment Contracts Held by Certain Investment Companies Subject to the AICPA Investment Company Guide

Dear Mr. Smith:

We are a registered investment advisor with \$14.5 billion in stable value assets as of August 31, 2005. Over 5,000 plans invest in our advised collective funds including public funds, corporate plans, and Taft-Hartley plans. Our firm is a member of the Stable Value Investment Association (SVIA) and has participated in developing the industry response to the referenced FASB Staff Position (FSP). We support the comments provided by the SVIA and appreciate the opportunity to additionally comment.

We support the Board's attempt to address issues related to the reporting of fully benefit responsive investment contracts held by non-registered investment companies. The comments that follow are provided to illustrate certain operational and implementation issues we believe exist in the proposed FSP. It would be helpful if the Board would clarify and reconsider certain aspects of the FSP as outlined below.

## **Effective Date**

As drafted the effective date of paragraph 12 does not provide adequate time to implement the proposed changes. Certain changes will require additional records to have been maintained from the first of this year. Also, some of the calculations required by the new disclosure requirements may require systems changes which will take time to develop and implement. In addition, for certain disclosures to be meaningful and comparable across financial statements, the stable value industry will need time to determine some consistent methodologies. We would encourage an effective date one year later than provided for in the proposed FSP.

## **Transition**

It is our understanding that the Board's intent was to minimize any potential harm to plan investors in issuing the proposed FSP. The transition language in paragraph 13 does not permit full grandfathering to the extent that, as of the effective date, "all, or essentially all, of the investment company's net assets are not held by participants in qualified employer-sponsored defined contribution plans. If the FSP does not permit investment companies to fail the "all or substantially all" standard, then those investment companies that fail to meet such standard will need to take immediate action that may be harmful to both redeeming defined benefit plans and the investment company's remaining qualified investors.

Investment companies have a fiduciary responsibility to existing investors. The defined benefit plan investors may be harmed should the plan fiduciaries need to invest their forced redemption proceeds in less than favorable market conditions; this type of liquidation could also harm the remaining investors in the fund by negatively impacting the future crediting rate and the make-up of the investment company's overall investment strategy. A full grandfather clause would avoid any potential preferential treatment of defined benefit plans over defined contribution plans regarding the liquidity protocol under the fund documents as well as eliminate the potential for inconsistent interpretations of the "essentially all" test.

To mitigate any harmful effects of any transition required to be in compliance with the FSP, we believe the best solution would be to revise the proposed text to include a grandfather provision for any portion of the net assets of the investment company that is not held, directly or indirectly, by participants in tax-qualified defined contribution plans as of the effective date to remain in the fund but must not be permitted to increase due to gross contributions, loan repayments, or transfers into the fund.

If a grandfather provision for all non-defined contribution assets is not permitted, investment companies will require a longer transition period (2-3 years) than outlined in the current FSP to implement an orderly transition with the least amount of harm to existing defined contribution plans as well as the defined benefit plans that will be exiting the fund.

## **FASB Staff Position**

Paragraph seven of the proposed FSP is intended to define under what circumstances an investment contract should be considered fully benefit-responsive and outlines certain criteria the contract must meet. As drafted, portions of this section may be technically misinterpreted or applied inconsistently.

<u>Paragraph 7.b.</u> This section says that if an event has occurred that may affect the realization of contract value, the contract shall no longer be considered benefit responsive without reference to the materiality of the event. For example, a decline in creditworthiness of the wrap issuer should only be considered an event if the issuer downgrade were such that the possibility of not realizing full contract value presented itself.

We would suggest language in the FSP be clarified to state that an event must materially affect the potential realization of contract value before the contract would no longer be considered fully benefit responsive.

<u>Paragraph 7.c.</u> indicates there can be no conditions, limits or restrictions on participant-initiated transactions however SOP 94-4 provides for the concept of an equity wash provision in fully benefit responsive contracts to prevent arbitrage by plan participants. This same concept is applicable for funds. We would suggest a footnote that references the relevant section of SOP 94-4 that clarifies equity wash provisions are allowable in this context.

<u>Paragraph 7.d.</u> outlines several plan events that must not be probably of occurring or the benefit responsive features of the contract held by the fund may be void. Since collective funds have many plans invested in the fund the probability that one plan may experience these plan events should not jeopardize the realization of contract value for the entire fund. We suggest that this section of paragraph seven is not applicable to collective funds.

## Financial Statement Presentation and Disclosure Requirements

The proposed FSP creates a change in how wrap contracts are valued and represented in financial statements. Previously, funds have provided the contract value of the fund and the fair value of the assets in the fund with the difference being the adjustment or fair value of the wrapper agreements. The FSP requires that there be a determination of the fair value of the wrap contract exclusive of the adjustment from contract value to fair value of the assets. Determining the fair value of the wrapper contracts is problematic as there is no standard methodology and it will take substantial time to develop an industry model. Without some consistency this valuation may be meaningless and misleading for financial statement readers. A delay in the effective date will allow funds to develop methodologies for valuing wrapper contracts.

Similar to above, the sensitivity analyses outlined in paragraph 11.e. may not be relevant to financial statement readers without a basis for comparability across different fund financial statements. For example the next four reset dates should specify over a calendar year, or quarterly periods, as there are different re-set periods for different funds. The language in this paragraph also calls for immediate hypothetical changes in interest rates equal to one-quarter and one-half of the current interest rate without specifying the standard for current interest rates. This calls for interpretation by fund sponsors and auditors and may not be consistent across funds. Utilizing the current fund yield as the basis for the current interest rate would be more specific. However, even with the standardization of the variables used in the sensitivity analyses, the information gleaned by financial statement readers may be misinterpreted and not representative of the future performance of the fund in catastrophic conditions and thus warrants the reconsideration by FASB of adding the sensitivity analyses to fund financial statements.

We appreciate the opportunity to express our views on the proposed FSP. If you have any questions regarding our comments, please contact Jill Cuniff, Managing Director, at (503) 603-2238.

Sincerely,

Gartmore Morley Financial