

Letter of Comment No: 5
File Reference: FSP8524A



WORLD-CLASS INVESTMENT MANAGER

January 7, 2005

Director, TA&I-FSP
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed FASB Staff Position No. EITF 85-24-a "Application of EITF Issue No. 85-24, "Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge," When Cash for the Right to Future Distribution Fees for Shares Previously Sold Is Received from Third Parties"

Dear Director:

We appreciate the opportunity to comment on proposed FASB Staff Position No. EITF 85-24-a, "Application of EITF Issue No. 85-24, "Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge," When Cash for the Right to Future Distribution Fees for Shares Previously Sold Is Received from Third Parties" (the "proposed FSP"). We support the objective of the proposed FSP, which is to permit revenue recognition at the time cash is received from a third party for the sale of rights to future distribution fees when the distributor does not retain recourse or continuing involvement.

The proposed FSP provides limited guidance and examples of both acceptable and unacceptable representations, warranties and indemnifications to assist financial statement preparers to determine whether they have recourse or continuing involvement that would preclude revenue recognition. Further, paragraph 25 of the proposed FSP states: "Provisions providing for repayment to the purchaser based on standard representations and warranties as to the validity of the Rights is not considered continuing involvement..." Beyond these limited examples of unacceptable and acceptable provisions, there are still many representations, warranties, covenants and indemnifications that are common provisions within B Share securitization program documents that do not fit clearly within the examples or descriptions of either acceptable or unacceptable provisions as these are currently outlined in the proposed FSP. We are concerned that diversity in practice may result if no additional guidance is provided in the final FSP. Therefore, we recommend that the FASB staff provide a more detailed discussion of the characteristics that distinguish representations, warranties,

covenants and indemnifications that preclude revenue recognition from those that do not, so financial statement preparers can better understand the FASB staff's intentions.

We agree that certain representations, warranties, covenants and indemnifications should preclude revenue recognition, specifically those provisions that are designed to shelter the purchaser from losses arising out of the sold future distribution fees proving to be uncollectible due to declines in credit quality or market conditions or as a result of actions taken by parties external to the distributor and the consolidated group. Such provisions are evidence of the seller's ongoing exposure to or participation in the risks associated with the sold rights. These provisions indicate continuing involvement or recourse and could be categorized as "participatory" provisions.

There are certain representations, warranties, covenants and indemnifications that are intended to either (1) protect the integrity of the rights to future distribution fees as originally bargained for by the purchaser, or (2) protect the purchaser from losses relating to the seller's failure to perform its duties and obligations under the program documents. We believe these provisions are "protective" in nature and should not preclude sale treatment. Examples of these protective provisions include:

- Indemnifications to protect purchaser from the impact of clerical errors and omissions on behalf of the seller;
- Indemnifications to protect the purchaser from voluntary actions taken by the distributor or the consolidated group that alter the original cash flow stream or other rights purchased by the purchaser to the purchaser's detriment, such as seller action to occasionally waive CDSCs for business reasons, to fail to comply with original investment objectives, to reduce or eliminate collections, to affect the purchaser's right to receive collections or to change the computation or timing of the receivables;
- Indemnities to protect the purchaser from breaches of the standard purchase and sale agreement representations or warranties by the seller; and
- Indemnities to protect the purchaser from litigation or costs of litigation arising out of any of the transactions, events or circumstances included in these indemnifications.

We welcome any questions you may have regarding our comments. Please contact Stacey Friday at (412) 288-1244 or Rich Novak at (412) 288-7045.

Sincerely,

/s/ Denis McAuley III
Denis McAuley III
Principal Accounting Officer