



KPMG LLP  
280 Park Avenue  
New York, N.Y. 10017  
8<sup>th</sup> Floor

Letter of Comment No: 10  
File Reference: FSPFAS140B  
Date Received: 9/7/04

September 3, 2004

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

**Proposed FASB Staff Position FSP FAS 140-b, "Application of EITF Issue No. 85-24, 'Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge,' When Future Distribution Fees are Sold to Unrelated Third Parties"**

Dear Mr. Smith:

We support the staff's conclusion that revenue or gain recognition would not be appropriate at the time cash is received from unrelated third parties in exchange for the right to receive future distribution fees (i.e., 12b-1 fees). Because the entity does not have a recognized financial asset at the time of the transaction, we do not believe that the transaction is within the scope of Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. As such, recognition of revenue or gain at the time cash is received from an unrelated third party is inconsistent with the conclusions reached in EITF Issue No. 85-24, "Distribution Fees by Distributors of Mutual Funds That Do Not Have a Front-End Sales Charge." As a result, we support the staff's conclusion that the cash payments from unrelated third parties should be accounted for in accordance with EITF Issue No. 88-18, "Sales of Future Revenues," which requires that the cash payments be accounted for as either debt or deferred income, depending upon the substance of the arrangement.

Because an exchange transaction regarding 12b-1 fees was not directly within the scope of Statement 140 or EITF 85-24, prevailing practice has been to recognize a sale if an entity had no continuing performance obligation to the unrelated third party. Given the prevailing practice, we believe that the proposed transition guidance that requires that a cumulative effect of a change in accounting principle be recognized upon adoption of the FSP and the proposed effective date are appropriate. Finally, we note that the conclusions in the proposed FSP are based on an analysis of the application of



Mr. Lawrence W. Smith  
September 3, 2004  
Page 2

generally accepted accounting principles rather than the industry's regulatory net capital rules, which may be different. Because the affected entities prepare financial statements in accordance with GAAP, we believe that it is appropriate for the staff to issue the FSP to provide clarity on the application of GAAP to these transactions.

\* \* \* \* \*

If you have questions about our comments or wish to discuss any of the matters addressed herein, please contact John Guinan at (212) 909-5449 or Paul Munter at (212) 909-5567.

Sincerely,

**KPMG LLP**